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**Referendum as a Negotiation Tool at Inter-state Bargaining:
Case-study of Irish Referendums on Lisbon Treaty 2008-2009**

Master Thesis

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ევროკავშირში ხელშეკრულების შემუშავების პროცესი წარმოადგენს ერთ-ერთ საკვანძო ეტაპს ინტეგრაციის პროცესის განვითარებაში. ლისაბონის ხელშეკრულება იქცევს განსაკუთრებულ ყურადღებას, რადგან ეს თემა არის ევროკავშირში პოლიტიკური პროცესების ერთ-ერთი ბოლოდროინდელი აქტუალური საკითხი.

ზემოთხსენებულ ხელშეკრულებას 2007 წლის 13 დეკემბერს პორტუგალიაში ხელი მოაწერა ევროკავშირის 27 ქვეყანამ, თუმცა ლისაბონის ხელშეკრულების რატიფიცირება ეროვნულ დონეზე აღმოჩნდა ის პოლიტიკური გამოწვევა, რამაც შეაფერხა ინტეგრაციის განვითარების მიმდინარე პროცესები.

ირლანდია იყო ერთადერთი ქვეყანა, რომელმაც მოიწვია რეფერენდუმი ქვეყნის ნაციონალური კანონმდებლობის მიხედვით. პირველი რეფერენდუმით ირლანდიამ უარყო ლისაბონის ხელშეკრულება, რამაც ევროკავშირის პოლიტიკური კრიზისი გამოიწვია.

ევროკავშირის უახლოეს ისტორიაში ეს მოვლენა წარმოადგენს ერთ-ერთ ყველაზე მნიშვნელოვან პერიოდს. აქედან გამომდინარე, ჩვენ გადავწყვიტეთ, გამოგვეკვლია ზემოთ ხსენებული საკითხი და მასთან დაკავშირებული პოლიტიკური კონტექსტი შეგვეფასებინა. კვლევის ძირითად მიზანს წარმოადგენს იმის ანალიზი, თუ როგორ შეიძლება იმოქმედოს ქვეყნის საშინაო პოლიტიკის ასპექტებმა ევროკავშირის მნიშვნელოვან მოლაპარაკებებზე; როგორ შეიძლება მიიღწეს კომპრომისი ევროკავშირის 27 წევრ სახელმწიფოს საერთაშორისო თანამშრომლობაში და რა გავლენა შეიძლება იქონიოს რეფერენდუმმა ქვეყანათშორის მოლაპარაკებებზე.

ნაშრომის საკვლევი კითხვა შემდეგია: შესაძლებელია რეფერენდუმის, როგორც მოლაპარაკების მექანიზმის, გამოყენება ქვეყანათშორისი გარიგების დროს ხელშეკრულების რატიფიცირების ეტაპზე? სხვა სიტყვებით რომ ვთქვათ, ქვეყნის ნაციონალურ დონეზე რატიფიცირების შეფერხება რეფერენდუმის შედეგად ხელს უწყობს თუ არა იმას, რომ ამ ქვეყნის მოლაპარაკების ძალა გაიზარდოს ქვეყანათშორისი გარიგების დროს?

იმისათვის, რომ ვუპასუხოთ ჩვენს საკვლევ კითხვას, ვიყენებთ იმ ავტორების ჰიპოთეზას, რომლებიც თვლიან, რომ რეფერენდუმი აძლიერებს სახელმწიფოს როლს მოლაპარაკების პროცესში.

უფრო კონკრეტულად კი, ჩვენ მივმართავთ საიმონ ჰაგისა (Simon Hug) და ტობიას შულზის (Tobias Schulz) მტკიცებას იმის შესახებ, რომ რეფერენდუმებმა, რომელიც დაიგეგმა საკონტიტუციო შეთანხმების რატიფიცირების მიზნით, გავლენა მოახდინა ხელშეკრულების შესახებ მოლაპარაკების პროცესზე. ეს კი მტკიცდებოდა იმით, რომ ქვეყნებმა, რომლებმაც რეფერენდუმი ჩაატარეს მთავრობათშორის კონფერენციის დამთავრებამდე, მოლაპარაკების ბოლო ეტაპზე წინ წამოწიეს ქვეყნის ინტერესები. ჩვენ გვსურს, გამოვიკვლიოთ ეს ჰიპოთეზა ირლანდიის რეფერენდუმის მაგალითზე, რაც ჩვენი ნაშრომის სიახლეს წარმოადგენს და საბოლოოდ დავასკვნათ, არის თუ არა ამ ავტორების ჰიპოთეზა რელევანტური ხელშეკრულების რატიფიცირების ეტაპზეც.

პირველი რეფერენდუმი ლისაბონის ხელშეკრულების შესახებ ირლანდიაში 2008 წლის 12 ივნისს ჩატარდა, სადაც ამომრჩეველთა უმრავლესობამ უარყო ხელშეკრულება. პოლიტიკური ჩიხიდან გამოსავლის მოსაძებნად გაიმართა დიპლომატიური მოლაპარაკებები: ევროპული საბჭოს შეხვედრები, სადაც ქვეყნის მეთაურები განიხილავდნენ იმ საკითხს, თუ როგორ ეპასუხათ ამ გამოწვევისათვის. ერთ-ერთი მსგავსი შეხვედრის დროს, 2008 წლის დეკემბერში გადაწყდა, რომ ევროკავშირი მიანიჭებდა ლეგალურ გარანტიებს ირლანდიას იმ საკითხებში, რაშიც ქვეყანას სუვერენიტეტის შენარჩუნება სურდა. ამის შემდგომ დაიგეგმა მეორე რეფერენდუმი, სადაც ამომრჩეველებმა მხარი დაუჭირეს ხელშეკრულებას.

ნაშრომში განხილულია 2008-2009 წლების მოვლენების მთლიანი პოლიტიკური კონტექსტი: წინა სარეფერენდუმო კამპანიები, პირველი რეფერენდუმის კვლევების ანალიზი, ქვეყანათშორისი მოლაპარაკებები ევროკავშირის დონეზე, მეორე რეფერენდუმის შედეგები. ამით გვსურს, დავადგინოთ მიზეზ-შედეგობრივი კავშირი დამოკიდებულ და დამოუკიდებელ ცვლადებს შორის: ირლანდიის რეფერენდუმმა ლისაბონის ხელშეკრულების შესახებ, როგორც დამოუკიდებელმა ცვლადმა, რა

გავლენა მოახდინა დამოკიდებულ ცვლადზე, ევროკავშირის წევრი სახელმწიფოს გავლენის გაზრდაზე მოლაპარაკების პროცესში.

საინტერესო დისკუსიის საგანს წარმოადგენს ის საკითხი, თუ რამ განაპირობა სახელმწიფოებს შორის მოლაპარაკებების დროს ევროკავშირის მხრიდან კომპრომისზე წასვლა ირლანდიის სასარგებლოდ.

ნაშრომში ირლანდიის მაგალითის ანალიზი მიმდინარეობს ენდრიუ მორავშიკის (Andrew Moravcsik) თეორიული მიდგომის ლიბერალ ინტერგავერნმენტალიზმის (Liberal Intergovernmentalism) საფუძველზე და ვეხებით მოლაპარაკების პირველ ორ ეტაპს: ეროვნული პრიორიტეტების ფორმირება (national preference formation) და ქვეყანათშორისი გარიგება (interstate bargaining).

მივიჩნევთ, რომ ეროვნული პრიორიტეტების ფორმირება განვითარდა პირველი რეფერენდუმის დროს, რასაც ხელი შეუწყო სხვადასხვა პოლიტიკური პარტიების, ინტერესთა ჯგუფების აქტივობამ წინა სარეფერენდუმო კამპანიების დროს. ამის შედეგად გამოიყო ის 5 საკითხი, რაც შემდგომში ქვეყნის სასარგებლოდ დაკმაყოფილდა. შესაბამისად მივიჩნევთ, რომ ირლანდიამ მოახერხა კომპრომისის მიღწევა ევროკავშირის დონეზე და წინ წამოწია ქვეყნის ინტერესები, რაშიც განსაკუთრებული როლი ითამაშა პირველმა რეფერენდუმმა. ამ უკანასკნელმა ირლანდიის მთავრობას მისცა გადაწყვეტილებაზე გავლენის მოხდენის შესაძლებლობა ქვეყანათშორისი გარიგების დროს.

აქედან გამომდინარე, შეგვიძლია დავასკვნათ, რომ ზემოთხსენებული ავტორების ჰიპოთეზა არის რელევანტური ხელშეკრულების რატიფიცირების ეტაპზე. კვლევის ჰიპოთეზა კი შემდეგნაირია: რეფერენდუმის, როგორც მოლაპარაკების მექანიზმის, გამოყენება შესაძლებელია ქვეყანათშორისი გარიგების დროს ხელშეკრულების რატიფიცირების ეტაპზე. სხვა სიტყვებით რომ ვთქვათ, ქვეყნის ნაციონალურ დონეზე რატიფიცირების შეფერხება რეფერენდუმის შედეგად განაპირობებს იმას, რომ ამ ქვეყნის მოლაპარაკების ძალა იზრდება ქვეყანათშორისი გარიგების დროს.

Abstract

The thesis refers to the Lisbon Treaty ratification hurdles, one of the most controversial periods of the European Union in the recent history. The main objective of this paper is to provide the analysis how domestic political aspects may impact on the grand bargains of the European Union; what can be the role of the referendum at interstate negotiation and how the compromise might be reached at international cooperation of 27 member states of the European Union. The main research question of the paper is the following: Can referendum be used as a negotiation tool at interstate bargaining at treaty ratification process? We apply to the case-study of Irish Referendums on the Lisbon Treaty 2008-2009 and discuss the political process emerging during the treaty ratification. This context actually facilitated the process of Interstate bargaining where Ireland obtained concessions on behalf of the national interests of the country. Therefore, we argue that due to the domestic constraints of ratification as a result of referendum shaping the national preferences of the country contributed to the expanding negotiation power of the country at the EU interstate bargaining. In the end we generalize the hypothesis assuming that a referendum can be used as a negotiation tool at interstate bargaining and the statement by Hug and Schulz that governments having referendum before the IGC realize more negotiation gains,¹ is applicable in the case of Treaty Ratification as well.

¹ Simon Hug, Tobias Schulz, "Referendums in EU Constitutional Building Process", *Rev Int Gov*, 2, (2007), 182, 177-218

Abbreviations:

CFSP . Common Foreign and Security Policy

EU . European Union

GAERC . General Affairs and External Relations Council

IAE . Irish Alliance for Europe

IBEC . Irish Business and Employers Confederation

ICTU . Irish Congress of Trade Unions

IFA . Irish Farmers Association

IGC . Intergovernmental Conference

ISME . Irish Small and Medium Business Association

MEP . Member of European Parliament

PANA . Peace and Neutrality Alliance

STA . Small Firms Association

TEEU . Technical, Engineering and Electoral Union

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Introduction

Treaty-making process in the European Union represents one of the key milestones in the development of the Integration process shaping the different patterns of the European project. Lisbon Treaty, one of the latest benchmarks of the political dynamics of the EU, attracts our particular attention. Reform Treaty, that was signed in Portugal on December 13, 2007 by the heads of the state and government of the European Union, was a continuation of the EU "constitutional politics" that officially started in December 2001 with the Laeken Declaration.² Once Lisbon Treaty was signed its ratification appeared as a big political challenge that hampered the reform process. Unlike from the Constitutional Treaty, this time governments restrained from consulting populations through referendums on the decision-making process of the treaty ratification. Ireland was the only country that convened the referendum according to the national legislation.³ Ireland rejected the treaty by the first referendum that plunged the EU into a political crisis. The problem had to be solved through high-level diplomacy and cautious planning of the next events.

The topic itself represents one of the most controversial periods of the European Union in the recent history. Therefore, we decided to address this particular issue and provide the assessment of the political context that emerged as a result of the treaty ratification. The main objective of this paper is to provide the analysis how domestic political aspects may impact on the "grand bargains" of the European Union; what can be the role of the referendum at interstate negotiation and how the compromise might be reached at international cooperation of 27 member states of the European Union.

The research question of the paper is the following: Can referendum be used as a negotiation tool at interstate bargaining at treaty ratification process? In other words, can domestic constraints of ratification, as a result of the referendum shaping the governmental

² Maurizio Carbone, *National Politics and European Integration: From the Constitution to the Lisbon Treaty*, (UK: Edward Elgar Publishing Limited, 2010), 1

³ John O'Connell, *Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty*, *Parliamentary Affairs*, Vol. 62, No. 2, (2009), 259, 258-277

preferences in the EU member state, expand the negotiating power of the country at interstate bargaining?

In order to present a comprehensive answer to the primary question of the thesis, we would like to provide empirical testing of the hypothesis of the scholars that have developed the idea that the referendum strengthens the negotiation power of the member state at the interstate bargaining. Specifically, we apply to the statement by Simon Hug and Tobias Schulz arguing that %referendums scheduled for the ratification of the EU-Constitution treaty has affected the bargaining over the new treaty on the evidence that countries having referendum before the conclusion of the IGC made significant gains in the last phases of the negotiation+⁴ We would like to explore the same hypothesis on the example of Irish referendums case-study that emerges as an innovation of the thesis; and provides the evaluation whether the hypothesis of Hug and Schulz is relevant and applicable at the treaty ratification process as well. On the other hand, we would like to contribute to the knowledge about the referendum role specifically at treaty-ratification process and fill the gap in this particular area.

The first referendum on Lisbon Treaty was held on June 12, 2008 that resulted the defeat of the treaty by 53,4% to 46,6% with a turnout of 53.1%.⁵ This created the political impasse in the European Union that was addressed by the strategic approach from the Irish government as well as from the European Union. After the set of discussions at EU level granting the legal guarantees for Ireland, the date for the second referendum was negotiated. What actually facilitated the obtaining concessions for Ireland at EU bargaining that contributed to the smooth ratification of the treaty leads to a very interesting discussion.

The Irish Referendums on Lisbon Treaty was selected for the paper, as this case-study clearly demonstrates how the failed referendum resulted in domestic constraints of ratification have influenced the interstate bargaining reaching concessions on behalf of the national

⁴ Simon Hug, Tobias Schulz, %Referendums in EU Constitutional Building Process+, Rev Int Gov, 2, (2007), 179, 177-218

⁵ Ireland rejects EU reform treaty, BBC News; Friday, 13 June 2008; available at <http://news.bbc.co.uk/2/hi/7453560.stm>; Accessed on May 15, 2010

interests of Ireland. In the paper we have analyzed the political context of Ireland in detailed including the first pre-referendum campaigns; post-referendum research findings of 2008; negotiations at the European Council meetings; and the second referendum outcome. This discussion of the processes that prolonged, more than one year, is essential to better explain the causal link between variables of the thesis leading to the conclusions: how Irish Referendums on Lisbon Treaty in 2008-2009, as an independent variable, influenced on, the dependent variable, EU member states negotiation power at interstate bargaining.

The analyzing the case-study proceeds through the theoretical framework of Liberal Intergovernmentalism, widely acknowledged theory by Andrew Moravcsik . According to the theory, rationalistic assumption of international cooperation is divided into 3 stages: national preference formation, interstate bargaining and the choice of international institutions.⁶ For our case, we refer to the first 2 levels consisting of a liberal theory of national preference formation and an Intergovernmentalist account of strategic bargaining between states.⁷ In addition, we include the level-game+metaphor by Robert Putnam that divides the process of negotiation into two stages: the bargaining phase, in which statesmen bargain to a tentative international agreement; and the ratification stage, in which domestic constituents in each country decide, formally or informally, whether to ratify and implement the agreement.⁸

We assume that national preference formation in Ireland happened during the first referendum in 2008. While national preferences are identified as the pressure from domestic groups according to the liberal Intergovernmentalism, in this case political parties, civil society, private individuals, and different interest groups have played a key role in pre-referendum campaigns that had an impact on the public opinion formation.

Post referendum research findings that aimed to classify the reasons why the electorate rejected the Lisbon Treaty, 5 key sensitive issues for Ireland were identified:

⁶ Andrew Moravcsik, *The Choice for Europe*, (UK: Routledge, 1999), 18

⁷ Ben Rosamond, *Theories of European Integration*, European Union Series, (Palgrave, 2000), 136

⁸ Andrew Moravcsik, *Integrating International and Domestic Theories of International Bargaining*, in *International Bargaining and Domestic Politics* ed. Peter B. Evans, Harold K. Jacobson, Robert D. Putnam., (University California Press, 1993), 23

Neutrality; Loss of Commissioner; Socio-ethical issues: threat to abortion, gay marriage, euthanasia, prostitution; Taxation Policy⁹ and Workers rights.¹⁰ Each of these topics was strongly lobbied by the different political parties, interest groups or alliances. Sinn Fein and PANA were focusing on the preserving the Neutrality under Lisbon Treaty; Loss of Commissioner was also advocated by the Sinn Fein party by the Slogan %Save our Commissioner- Vote NO+; Socio-ethical issues were lobbied by the Catholic group, Coir targeting traditional Catholics; Taxation Policy, that contributed to the economic development internally Ireland was supported by the strong camp, Libertas Group¹¹ and Workersrights . by the Peoples Movement and the People before Profit Alliance.¹² On the other hand, most of those issues were embedded in the traditions and identity of the Irish People and reflected the arguments used during different referendum campaigns in Ireland.¹³

These issues became the domestic preferences with the relationship of the European Union. It is also important to note that there was a high perception among people that renegotiation of the treaty was possible for better outcome. In addition, it was recognized that No camps was much more persuasive rather than Yes campaign.¹⁴

In order to accommodate the anxieties and sensitivities revealed during the referendum, these issues were brought at the EU negotiation table. The European Council meetings in June, October, December 2008 and June 2009 were intensively discussing the

⁹ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008), 19; Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 10, 2010

¹⁰, Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, September 2008), 25; available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf> Accessed on May 15, 2010

¹¹ Stephen Quinlan, %The Lisbon Treaty Referendum 2008+; Irish Political Studies, Vol. 24, No. 1, (2009), 110-112; 107-121

¹² Main Players; No side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelibontreaty/mainplayers/no.html>; accessed on May 25, 2010

¹³ Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 110

¹⁴ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008), 13; Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 10, 2010

possible response to the failed referendum. It was clear that both sides were interested in the successful ratification as Ireland's economic future could not be contemplated seriously outside the EU in the global financial crisis,¹⁵ on the other hand the EU was striving to meet the date set for the Lisbon treaty to enter into force. Also once national preference of the country was clear, the government was supposed to act on the basis of national preferences and bargaining hard for the greater positive distributional consequences for the country, that is also confirmed by the Liberal Intergovernmentalist approach. This led to the possible compromise on which domestic constraint of ratification apparently supported Ireland to receive extra concessions: the country received special legal guarantees on the sensitive areas of national sovereignty mentioned above and the EU decided to keep one national from each country in the Commission.¹⁶ Therefore, we argue that as a result of the domestic constraints of ratification as a result of referendum shaping the national preferences of the country contributed to the expanding negotiation power of the country at the EU interstate bargaining. Irish Government managed to gain concessions and preserve guarantees on some issues of national interests of the country. As a result, the special guarantees facilitated the winning of the second referendum in favour of the Lisbon Treaty.

Therefore we assume that the hypothesis of Hug and Schulz is relevant for the treaty ratification level as well and the referendum can be used as a negotiation tool at interstate bargaining. Furthermore, we consider that the hypothesis can be generalized and be applicable in different situations.

¹⁵ John O'Brennan, 'Ireland's plan to resurrect the Lisbon Treaty to be unveiled at the Brussels summit', (2008), 2; available at <http://www.ceps.eu/node/1587> ; accessed on June 1, 2010

¹⁶ Brussels European Council, Presidency Conclusions, (19/20 June 2009), 2; available at http://ec.europa.eu/regional_policy/cooperation/danube/documents/council_conclusions.pdf ; accessed on May 20, 2010

2. Methodology

The paper represents the qualitative research addressing the latest treaty-ratification process in the European Union through popular public voting in Ireland. We aim to consider the causal relationship between a referendum and treaty ratification process in the European Union. Our research question is the following: Can referendum be used as a negotiation tool at inter-state bargaining at treaty ratification process? In other words, can domestic constraints of ratification, as a result of the referendum shaping the governmental preferences in the EU member state, expand the negotiating power of the country at interstate bargaining?

We provide the brief overview of the arguments developed by scholars about the referendum as a negotiator's power at interstate bargaining. More specifically, we apply to the hypothesis of Hug and Schulz stating that countries having announced a referendum before the conclusion of the intergovernmental conference on Constitutional Treaty (Brussels June, 2004) made significant gains in the last phase of negotiations.¹⁷ Our aim is to provide an empirical testing of this hypothesis on the case-study of Irish Referendum on Lisbon Treaty in 2008-2009 and answer the initial question of the paper: whether referendum can be used as a negotiation tool at interstate bargain, in our case at treaty ratification process.

The case study of the Irish referendum represents the innovation of this paper as it is discussed from the viewpoint of the referendum producing bargaining leverage for the country. After discussing set of events and the political context of the country, we conclude that this example clearly illustrates the public decision influence on international cooperation, therefore is relevant for our research. On the other hand, there is a lack of knowledge in theorizing the treaty-making process in the European Union in case of the Lisbon treaty. Under Irish case we would like to contribute to the further academic research.

As a result independent variable in the thesis is Irish Referendums on Lisbon Treaty in 2008-2009 influencing on the dependent variable, EU member states's negotiation power at interstate bargaining. The analysis is provided through scrutiny of the political process that started with the pre-referendums campaigns, followed by the first referendum, European

¹⁷ Simon Hug, Tobias Schulz, "Referendums in EU Constitutional Building Process", *Rev Int Gov*, 2, (2007), 179, 177-218

Council meetings and special arrangements for the second referendum that fits in the timeframe from March 2008 to October 2009. In this paper we do not discuss the Lisbon Treaty and changes brought by the treaty. We attempt to explain the link between the referendum at domestic level and intergovernmental bargain, how it influences on the negotiation power of the member states to secure the national interests of the country and reach the compromise at the negotiation table of 27 countries of the European Union; % make obscure plain to see+¹⁸ As a result, our analysis refers to 2 levels: domestic and international.

Theorizing of the treaty making process takes place in the framework of the Liberal Intergovernmentalism that provides clear insights to the national preference formation at domestic level, in this case as a result of the referendum, and then strategies pursued by the governments at the international negotiation table based on %the configuration of societal preferences+¹⁹ In addition, we include the widely acknowledged metaphor used by the Robert Putnam in his theory: %level games+.

We imply the inductive research strategy during the research that seems relevant for our case moving to %produce generalizations of characteristics or patterns+²⁰ from specific observations. The hypothesis of the thesis deriving from the case-study analysis can be generalized as well.

Sources used for the research paper are official documents of the European Union especially European Council Meetings, Presidency Conclusions; academic articles as well as different analytical papers around the topic; books; internet sources mainly for factual information; news accessed online at Irish Times; Guardian; BBC; Reuters; Euobserver; Euractiv reports; in addition, interview with Jane O'Mahony, lecturer at the University of Kent and co-author of %Ireland and the European Union+. The paper also includes quantitative data, Eurobarometer surveys conducted by the European Commission.

¹⁸ Norman Blaikie, *Designing Social Research*,. (Blackwell Publishing Ltd., 2004), 75

¹⁹ Andrew Moravcsik, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, in *Debates on European Integration* ed. Mette Eilstrup- Sangiovanni, (Palgrave Macmillan, 2006), 275

²⁰ Norman Blaikie, *Designing Social Research*, (Blackwell Publishing Ltd., 2004), 104

Finally, we conclude that domestic constraints of ratification as a result of the referendum contributed to the expanding negotiation power of the Irish government at interstate bargaining in order to secure national interests of the country. We assume that the hypothesis can be generalized and could be applicable to different environments.

3. Literature Review

In this part of the paper we would like to provide the related literature to the topic of the paper. Considering the diverse views by different scholars definitely is essential for better understanding and balanced information.

The book *National Politics and European Integration*, edited by the Maurizio Carbone represents the latest publication that discusses the domestic politics of treaty reform in the European Union from the Constitution to the Lisbon Treaty. Importantly, it contributes to the literature on the negotiation and preparatory process of the Lisbon Treaty. Particularly, domestic politics are emphasized: the impact of the political system, general context of preference formation, role of the actors involved beyond the governments.

Applying to the Irish case one of the contributors to the book, Brian Girvin provides an overview of the Irish involvement in the EU during the Constitutional Treaty development as well as in relation to the Lisbon Treaty. Focusing on the consequences of the first Irish referendum on Lisbon Treaty, the author concludes that *in the Irish case at least, European issues are treated as constitutional issues and are domesticated through the referendum process. This allows for considerable disagreement over Europe but this takes place within a well-defined political space and does not subsequently affect political competition or loyalty.*²¹ The rejection of the treaty by Irish electorate and then accommodating national interests of Ireland as a result of the referendum findings, it is concluded that *it cannot be denied that the Irish position on Europe has become far more openly qualified than in the past.*²²

The book *Ireland and the European Union*, by Brigid Laffan and Jane O'Mahony includes the chapter referendums and public opinion that provides a valuable information about the attitudes of Irish electorate towards the European Union; constitutional basis of the public consultation by the government; voting in the Single European Act and Maastricht; Nice treaty; Lisbon referendum of 2008. Authors also identify the areas that have been motifs of the debate during the referendum and caused the concerns in relation to the EU: *neutrality,*

²¹ Brian Girvin, *Ireland: more referendums anyone?*, in *National Politics and European Integration: From the Constitution to the Lisbon Treaty* ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 141

²² *Ibid*

sovereignty, and independence, and the threat integration posed to traditional Catholic values; also to the possible conscription a common European army.²³ The book also reviews the main institutions through which government communicate with public on European issues such as National Forum on Europe in general; Referendum Commission during referendums. Talking about the Determinants of public support, the authors rely on the utilitarian theory as a predictor of the support for the European Integration. The utilitarian perspective posits that those who benefit more in an economic sense from European integration should be more supportive of the process than those who do not. Those who are more educated, of the professional / managerial classes, more likely to have traveled, and have benefited from trade liberalization are more likely to perceive the benefits European integration brings and hence support European integration. In Ireland, survey evidence shows that individuals in higher occupational categories and more highly educated are more favorable towards European integration.²⁴

Lisbon Fado: The European Union under Reform is entirely devoted to the new treaty bringing new developments for the Union and discusses this point from the positive perspective. As for the Irish case, it seeks to answer the question: what is the truth behind the Irish No vote to the Lisbon Treaty? Author argues that government failed to deliver the proper information to the public, on the other hand, the document of the new treaty was too complex to understand without close scrutiny.²⁵ He also puts the responsibility on the EU side claiming that union had to assure the proper explanation of the treaty to the Irish people. This shows that there is a clear disconnect between EU institutions and its citizens.²⁶ The author emphasizes the economic context, Irish benefits from the EU, current situation of emerging

²³ Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 110

²⁴ Ibid, 123-127

²⁵ Francisco J. Lorca, The Treaty of Lisbon and the Irish Impasse, in Lisbon Fado: European Union Under Reform Joaquín ed. Roy and Roberto Domínguez, [Book on-line] (Miami-Florida European Union Center/Jean Monnet Chair, 2009, accessed at June 15, 2010); 110; Available from <http://www6.miami.edu/eucenter/books.html> internet.

²⁶ Ibid

economic crisis and concludes that "a frightening economic scenario that is unfolding might serve to deflect the tension away from the Institutional debate."²⁷

Jane O'Mahony in the article "Ireland's EU Referendum Experience" investigates the flow of referendums on EU related issues in the country; actual participation and citizens involvement in the political process; the development of the rules of Irish game of popular voting. Author also highlights the main issues highlighted in the referendum campaigns generally in Ireland. The focus is maintained on the dynamic that has emerged at the Nice I and Lisbon I referendum. The article argues that Irish referendums on Lisbon Treaty involve two elements: elite withdrawal and populist capture. Author states that the elite withdrawal was even more evident in the first Lisbon referendum of June 2008. "The retreat of the political elite from the Lisbon campaign could be said to be a mixture of both accident and design. A political vacuum emerged which was filled by effectively organized No campaigners."²⁸ In the circumstances when the level of knowledge of the EU in Ireland is low, the populism is well used, as it is mentioned in the article. "Populism is not confined to grass-roots movements led by charismatic leaders, members of political establishment can also adopt populist tactics with the use of simple, direct language that appeals directly to the people."²⁹

Finally, the author addresses the question whether there is a rise in Eurosceptic attitude in the Irish public or not. Using the statistics and opinion polls of the Eurobarometer, it states that "while on their own such findings do not point directly to rising Euroscepticism among the Irish electorate, they do illustrate that Irish support for European Integration is nuanced."³⁰

²⁷ Francisco J. Lorca, The Treaty of Lisbon and the Irish Impasse, in Lisbon Fado: European Union Under Reform Joaquín ed. Roy and Roberto Domínguez, [Book on-line] (Miami-Florida European Union Center/Jean Monnet Chair, 2009, accessed at June 15, 2010); 119; Available from <http://www6.miami.edu/eucenter/books.html> internet.

²⁸ Jane O'Mahony, "Ireland's EU Referendum Experience", Vol. 24, No. 4, (2009), 438, 429-446

²⁹ Ibid, 441

³⁰ Ibid, 443

The Lisbon Treaty Referendum 2008 by Stephen Quinlan is entirely focused on Irish case of 2008 and poses the question: Why would a country so supportive of EU membership reject a European Treaty?³¹ The article scrutinizes the process of the referendum starting from the background information; outlines the political context of the country, main players on Yes and No sides of the campaigns. In addition, key issues of the camps were identified and mistakes of the Yes Campaign were highlighted. The paper gives an evaluation of the different factors that pushed the electorate to vote no. In the end, it provides the analysis with the potential continuation of the process: the government moves to the second referendum, which is a risky strategy. At the last three European referendums have proven, for a Treaty to be ratified a vigorous and enthusiastic information campaign is necessary. If this is lacking, rejection is a distinct possibility as Nice and Lisbon have demonstrated.³²

John O'Brennan in his work Ireland says NO (again): the 12 June 2008 Referendum on Lisbon Treaty argues that many different reasons could contribute to the negative outcome in the referendum such as: age, educational attainment, geography, gender and social class. Author comprehensively discusses the background of the political context in the country; while talking about the campaigns in favour and against the treaty, identifies the key issues serving as important parts of the campaigns. Discussing the outcome and post-referendum research findings, the author points out the main determinants of the No Vote: lack of knowledge and sense of national identity. The Irish attachment to an overwhelmingly exclusivist national identity rather than a more open and fluid (including European) identity means that a space exists where issues such as neutrality, sovereignty and Ireland's relative influence in the EU constitutional matrix can be readily exploited by opponents of the European Integration process and where any changes in the EU Constitutional order can be emotively presented as an existential threat to Ireland's values and interests.³³

³¹ Stephen Quinlan, The Lisbon Treaty Referendum 2008, Irish Political Studies, Vol. 24, No. 1, (2009), 107, 107-121

³² Stephen Quinlan, The Lisbon Treaty Referendum 2008, Irish Political Studies, Vol. 24, No. 1, (2009), 119, 107-121

³³ 3. John O'Brennan, Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty, Parliamentary Affairs, Vol. 62, No. 2, (2009), 274, 258-277

John O'Brennan also published another article 'Ireland and the Lisbon Treaty: Quo Vadis?' where he elaborates on the possible alternatives how the treaty ratification process should proceed after the rejection and how the relationship between Ireland and the EU may develop. In the beginning author makes key assumptions: Irish government's objective is to remain part of the EU; there will be a political pressure on Ireland; treaty will not be renegotiated; Nice Treaty not suitable to respond the further objectives of the EU.³⁴ Later, article offers four options for achieving ratification: first is to ignore the result and ratify the treaty by Statute of the Oireachtas; second alternative proposed was to ratify part of the Lisbon by legislation with further referendum to follow on defined issues; third option was a second referendum with assurances on tax, CFSP, abortion and Ireland's institutional position attached as declarations to the Lisbon Treaty or with new opt-out protocols; and the last was again public consultation by the government whether Ireland should remain in the EU or leave.³⁵

Cathal M. Bruga in the article 'Why Ireland rejected the Lisbon Treaty' offers an interesting statement: it was a failure from Europe to articulate the overall justification of the treaty, for this strengthening of European powers in terms acceptable to the Irish, who hope for a federalist Europe, and don't trust the global military intentions of some of Europe's leaders.³⁶ Therefore, the author is focusing on the means of the coverage used during the pre-referendum campaigns: radio and TV, Print Media, Posters, door-to-door canvas. In the end, some details of what went wrong are highlighted: defensive character of the Yes side; no in-depth research of the voters' attitude; no acknowledgement of what would happen if Ireland voted 'No'.³⁷

Matt Qvortrup poses an interesting question 'Rebels without a Cause?' and addresses the Irish Referendum on Lisbon Treaty. The paper concludes that 'the voters did not like what

³⁴ John O'Brennan, 'Ireland and the Lisbon Treaty: Quo Vadis?', Centre for European Policy Studies, No. 17 (2008), 2; available at <http://www.ceps.eu/node/1565> ; accessed on June 1

³⁵ Ibid, 5-10

³⁶ Cathal M. Bruga, 'Why Ireland Rejected the Lisbon Treaty', Journal of Public Affairs, 8, (2008), 303, 303-308

³⁷ Ibid, 308

was on offer, and that they, consequently, made a decision consistent with their preferences.³⁸ Interestingly, it also outlines few similarities between the referendum in 2008 on Lisbon treaty and in 2005 on Constitutional treaty: working class tended to be more sceptical of the EU; turnout was not related to the outcome; the pro-treaty parties allowed the no-camp to set the agenda and only belatedly sought to counter the no-side.³⁹

These publications we have referred in this chapter were addressed to the Irish referendum that caused a high political challenge in 2008 and consequently attracted the interest of the scholars. As for the main works, related to the concept of the referendum as a negotiation tool, will be discussed in the upcoming chapter.

³⁸ Matt Quirtrup, 'Rebels without a Cause? The Irish Referendum on the Lisbon Treaty', *The Political Quarterly*, Vol. 80, No.1, (2009), 65, 59-66

³⁹ *Ibid*, page 59

4. Referendum as a Negotiation Tool at Inter-state Bargaining

Referendums serve as an expression of democratic values where citizen participation has a momentous impact on the decision-making mechanism. There has been a significant growth of the use of referendums worldwide addressing specific issues in order to legitimize the governments' decision or provide an advisory opinion. Compared to the political environment where the referendum has been used only sparingly in the past, it has now become more common, and pressure from both the public and political leaders for its increased use continues to grow.⁴⁰ In contemporary democratic societies for various reasons the referendum seems to fulfill a need of both governments and citizens.⁴¹ Two types of democratic governance can be distinguished: direct democracy, in which policy decisions are made by citizens, and representative democracy, in which citizens delegate decision making to elected legislators.⁴² In addition, some scholars argue that referendum strengthens representative democracy.⁴³

There have been a number of conventional approaches emphasizing the constitutional, legal or political origins of the referendums. A referendum may be advisory or mandatory. On the one hand, its outcome may be treated merely as a comprehensive opinion poll on a significant issue, with a verdict that can be translated into law or policy as the government or legislature may see fit. On the other hand, it may be part of the statutory process: a popular Yes may be required before a law or constitutional change is put into effect.⁴⁴ Nevertheless,

⁴⁰ Matthew Mendelsohn, Andrew Parkin, *Referendum Democracy, Citizens, Elites and Deliberation in Referendum Campaigns*, (Palgrave 2001), 1

⁴¹ Laurence LeDuc, *Politics of Direct Democracy*, (Canada: Broadview Press, 2003) 13, available at www.books.google.com

⁴² Matthew Mendelsohn, Andrew Parkin, *Referendum Democracy, Citizens, Elites and Deliberation in Referendum Campaigns*, (Palgrave 2001), 3

⁴³ David Butler, Austin Banney, *Referendums Around the World*, Washington: American Enterprise Institute for Public Policy Research, 1994. available at www.google.com

⁴⁴ *Ibid*, 1

political impetus to hold the referendum should not be underestimated, the decision to hold a referendum in any given country depends essentially on political factors.⁴⁵

Referendums regarding European issues within the EU member states have attracted significant attention as it represents one of the most important recent mainstays in the process of European Integration. French and Dutch referendums on Constitutional Treaty and later Irish referendum on Lisbon Treaty, that have hampered the EU's constitutional development, confirms the high political importance of the referendums. Within the EU the majority of the referendums have been held on new treaty adoption or membership issues. Our particular interest is attached to the treaty referendums which aim to ratify the EU treaties or to enable the ratification to proceed. Consequently, these referendums are vital as new treaties establish new patterns of institutional behavior and new legal relationships, thus shaping the development of integration.⁴⁶ Furthermore, using a referendum as a means of ratification provides greater legitimacy for constitutional change than alternative procedures and at the same time allows a people to symbolically affirm its status as a sovereign political community.⁴⁷ On the other hand, having to hold a referendum on the EU Treaty reform increases the risk that the reform will be rejected.⁴⁸

However, once the immense complexity of the EU's most institutional and political context is referred, they are encouraged to vote strategically (against in favour of particular domestic parties) rather than to express their sincere views on EU matters.⁴⁹ In this context, appeals to national interest will probably trump the call to consider broader issues of

⁴⁵ Carlos Closa, 'Ratifying the EU Constitution: Referendums and their Implications', (Washington: Brookings Institution, 2004), 2, available at <http://www.brookings.edu/fp/cuse/analysis/closa20041101.pdf> accessed on June 10, 2010

⁴⁶ Patricia Roberts-Thomson, 'EU treaty referendums and the European Union', *European Integration*, Vol. 23, (2001), 106, 105-137

⁴⁷ Matthew Mendelsohn, Andrew Parkin, *Referendum Democracy, Citizens, Elites and Deliberation in Referendum Campaigns*, (Palgrave 2001), 10

⁴⁸ Simon Hix, *The Political System of the European Union*, The European Union Series, (N.Y: Palgrave Macmillan, 2005), 201

⁴⁹ *Ibid*

European integration.⁵⁰ Therefore, the need to satisfy national aspirations and the need to obtain unanimous approval of the member states creates the space for political manoeuvre at EU level where compromise might be reached.

In the European Union referendums have played an important role expressing the public opinion on the key developments of the union. Once national interests of the countries are concerned during these developments, we may assume that referendums may play an important role at intergovernmental bargaining where domestic constraints of ratification can be used to reach concessions. In this context referendum can be discussed as a mechanism that can strengthen the negotiation power of the country. Carlos Closa suggests a rationalistic/strategic approach of the convening referendums in the EU. He states that domestic constraints resulting from the combination of domestic institutional arrangements and the preferences of actors affect the negotiations.⁵¹ In addition, he argues that this rationalistic approach explains governments' decision to convene referendums as a tactical devices to obtain extra leverage in negotiations within an IGC.⁵²

Closa's argument is elaborated in the work of Hug and Konig discussing Governmental Preferences and Domestic Constraints at the Amsterdam Intergovernmental Conference. After investigating the ratification procedures in the fifteen member states involved in the IGC negotiation, authors state, that domestic ratification constraints, determined by the institutionally-defined ratification hurdles and the preferences of the relevant ratifying actors, influence the outcome of the bargaining process.⁵³ As the case-study of Amsterdam Conference shows domestic constraints made an impact on the changes in draft proposal. The similar hypothesis is developed again by Hug along with Schulz about referendums in EU's Constitutional Building Process. The evaluation of the scheduling of the referendums for

⁵⁰ Carlos Closa, *Ratifying the EU Constitution: Referendums and their Implications*, (Washington: Brookings Institution, 2004), 4, available at <http://www.brookings.edu/fp/cuse/analysis/closa20041101.pdf> accessed on June 10, 2010

⁵¹ Carlos Closa, *Why Convene Referendums? Explaining choices in EU constitutional politics*, *Journal of European Public Policy*, 14:8, (2007), 1314, 1311-1331

⁵² *Ibid*

⁵³ Simon Hug, Tomas Konig, *A New View of Ratification: Governmental Preferences and Domestic Constraints at the Amsterdam Intergovernmental Conference*, *International Organization* 56, 2, (2002), 471, 447. 476

the ratification revealed that it had influenced the negotiation process of the treaty. Countries having announced a referendum before the conclusion of the IGC in Brussels in June made significant gains in the last phases of the negotiation depending on the voters' preferences.⁵⁴ Originally Schelling expressed an opinion about negotiation power that could be tied by the domestic constraints. He claims that this is a strength of the weakness since one always can recede if retreat proves necessary to agreement.⁵⁵

To sum up, government can strengthen their argument for the compromise by the fact that through popular voting people of the country may not accept certain provisions and therefore concession is needed which maximizes their negotiation power. Hence, the insight may show that the negotiator with the higher domestic constraints is, if a negotiated outcome is possible, better off.⁵⁶

In this paper we would like to apply the approaches mentioned above and test the hypothesis of the Hug and Schulz stating that countries with an electorate preferring the status quo and a referendum announced before the end of the IGC realize more negotiation gains, independent of the other domestic ratification constraints.⁵⁷ We would like to explore the particular issue from the viewpoint of the treaty ratification stage. Therefore, our research question is the following: Can referendum be used as a negotiation tool at inter-state bargaining at treaty ratification process? In other words, can domestic constraints of ratification, as a result of the referendum shaping the governmental preferences in the EU member state, expand the negotiating power of the country at interstate bargaining?

In order to confer this issue and discuss the leverage of the referendum at EU negotiation table, we would like to address the case-study of Irish referendums on Lisbon Treaty 2008-2009. After signing the Lisbon Treaty by all heads of the state and government of

⁵⁴ Simon Hug, Tobias Schulz, 'Referendums in EU Constitutional Building Process', *Rev Int Gov*, 2, (2007), 179, 177-218

⁵⁵ Thomas C. Schelling, *The Strategy of Conflict*, (USA: Harvard College, 1980), 22

⁵⁶ Simon Hug, 'Models of Multilateral Negotiations and Ratification', (University of Geneva, 2009), 3, available at www.unige.ch/ses/spo/static/simonhug/momn/momn.pdf; accessed on June 15, 2010

⁵⁷ Simon Hug, Tobias Schulz, 'Referendums in EU Constitutional Building Process', *Rev Int Gov*, 2, (2007), 182, 177-218

the EU in December 2007⁵⁸ each country was supposed to ratify the treaty according to the national legislation. In the case of Irish Constitution, the technique of precise authorization has required amendment by referendum after every new treaty since the Single European Act in 1986.⁵⁹ After the failure of the first referendum in Ireland special guarantees for the country were negotiated securing the sovereign governance on the issues of national interest. By second referendum Ireland ratified the Lisbon Treaty.⁶⁰

This case gives a clear picture how the process of ratification have affected the EU reform process and negotiating concessions at inter-state bargaining. Applying to the rationalistic approach of the referendums, we discuss the Irish case-study on Lisbon Treaty from the view-point of the Liberal Intergovernmentalism. Addressing the coherent set of assumptions of the theory we identify the national preference formation level as a result of the first referendum and discuss its interaction at international level. The analysis also employs the two-level game metaphor. The framework of the institutional delegation of the Liberal Intergovernmentalism is not relevant in this case. As a result of the scrutiny of referendum role at international negotiation would like to answer the ultimate question of this paper: whether Ireland managed to use the referendum as a leverage tool for reaching the compromise at intergovernmental bargain during treaty ratification process or not.

⁵⁸ Treaty of Lisbon, Official website of the European Union; available at http://europa.eu/lisbon_treaty/take/index_en.htm accessed on June 10, 2010

⁵⁹ Carlos Closa, Why Convene Referendums? Explaining choices in EU constitutional politics, *Journal of European Public Policy*, 14:8, (2007), 1312, 1311-1331

⁶⁰ Ireland backs EU's Lisbon Treaty, BBC news, 3 October 2009, available at <http://news.bbc.co.uk/2/hi/8288181.stm>; accessed on June 5, 2010

5. Case-study: Irish Referendums on Lisbon Treaty 2008 & 2009

5.1 Irish EU Referendum Experience and Constitutional Context

Ireland joined the European Project, European Economic Communities at that time, in 1973,⁶¹ that transformed the country from being on the edge of Europe to the progressive prosperous member of the Union. Irish support for the Europe created the picture of 'Model Europeans'.⁶² In Ireland European Integration was viewed much as 'democracy, peace, economic progress and happy family life'.⁶³ The perception derived from the huge economic benefits that the country gained through EC membership: Ireland as a relatively poor member state of the community received financial aid through Structural Funds assisting early stage of development as well as through operation of the Common Agricultural Policy. Also better economic environment was created for the country through the resultant market access to the continental member states for goods manufactured in Ireland. The impact on Ireland has been visibly greater than anywhere else. The reason for this is that Ireland has been in a position to attract large-scale external investment in high-tech manufacturing.⁶⁴ Furthermore, Europe has been widely acknowledged as 'a vital interest' for Ireland, and it has been official policy to actively promote the single market and the Euro as well as other integrationist initiatives.⁶⁵ On the other hand, Ireland has been committed to the European values such as Democracy and Human Rights, being member of the Council of Europe and a party to the European Convention on Human rights since its establishment.

Irish attitudes towards European Integration were extremely positive based on Eurobarometer surveys dating from the membership. Irish Support now is even higher

⁶¹ European Countries, Official website of the European Union, available at http://europa.eu/abc/european_countries/eu_members/ireland/index_en.htm accessed on June 30, 2010

⁶² Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 105

⁶³ Karin Gilland, Irish Euroscepticism in Euroscepticism, Party Politics, National Identity and European Integration ed. Robert Harmsen and Menno Spiering, (Amsterdam, New York, NY 2004), 171

⁶⁴ Garret FitzGerald, Ireland and the European Union, Radharc, Vol. 3 (2002), 125, 123-135

⁶⁵ Brian Girvin, Ireland: more referendums anyone?, in National Politics and European Integration: From the Constitution to the Lisbon Treaty ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 127

compared to the 1980s. In 2007, one year before the first Lisbon Treaty Referendum, in response to the second most frequently asked question in Eurobarometer surveys . whether a country has benefited from EU membership, a remarkable 86 per cent believed Ireland has benefited from being a member; Sixty-eight per cent of Irish people held a positive image of the European Union. Seventy-six per cent said they believe Irish membership of the EU is a good thing.⁶⁶

However, compared to positive public support for the Europe, referendums results suggest the opposite outcome: although majority of Ireland's population supported the accession in 1972 and approved next EU treaties Single European Act (1987), Maastricht (1992) and Amsterdam treaty (1998), the following tendency appeared: in subsequent referendums (after accession) neither the Yes vote nor the turnout were ever as large again, the general trend being instead a decrease in the Yes majority as well as the turnout.⁶⁷ Prior to 2001, Ireland had demonstrated consistent support for the expansion of the EU and for most of the innovative changes that occurred in the 1980s and 1990s. For the most part, Irish voters were supportive if not always enthusiastic about European Integration during this period.⁶⁸ This changed during the Amsterdam Referendum campaign, when Euro-critical voices, marginalized in the key political institutions such as the Oireachtas, fought increasingly vigorous campaigns against EU treaties. In the Aftermath of the Nice and Lisbon Treaty Referendums, the pro-European consensus of the mainstream political elites remains, but their ability to persuade the Irish electorate to follow their lead is weakened.⁶⁹ Ireland rejected the Lisbon Treaty as a result of the referendum in 2008 that brought the country in the crisis in its external relations. On the other hand, it hampered the constitutional

⁶⁶ Public Opinion in the European Union, National Report Ireland, Spring 2007, Eurobarometer 76, European Commission available at http://ec.europa.eu/public_opinion/archives/eb/eb67/eb67_ie_nat.pdf accessed on June 5, 2010

⁶⁷ Karin Gilland, Irish Euroscepticism in Euroscepticism, Party Politics, National Identity and European Integration ed. Robert Harmsen and Menno Spiering, (Amsterdam, New York, NY 2004),174

⁶⁸ Brian Girvin, Ireland: more referendums anyone?, in National Politics and European Integration: From the Constitution to the Lisbon Treaty ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 126

⁶⁹ Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 106

development of the European Union starting with Laeken Declaration in 2001 aiming at improving democracy, transparency and efficiency of the union.⁷⁰

According to the Article 48 of the Treaty of the European Union, all amendments of the EU and EC treaties shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.⁷¹ In case of Lisbon Treaty 26 member states decided for parliamentary vote. Ireland was the only country that needed to ratify the treaty as a result of the popular referendum due to the National Legislation. The requirement was established by the Irish Supreme Court decision *Crotty v. An Taoiseach* case in 1987.

The appeal about Single European Act by Anti-EEC Campaigner Raymond Crotty was allowed by the Supreme Court on the grounds of foreign policy as Title of III about European Political Cooperation posed restrictions on the foreign relations of the country and was inconsistent with Irish Constitution.⁷² The dominant interpretation of the judgment was that any further change in the EU constitutional order with implications for Irish sovereignty had to be legitimated through referendum rather than parliamentary statute.⁷³ This meant that changes in EU treaties needed to amend Irish Constitution by means of a referendum before they could ratify by the state.

The Constitutional Context of referendums in Ireland has to be taken into account while discussing the public opinion and national constitutions having impact on European Integration. However, the decisive defeat of the Lisbon Treaty in June 2008 suggested that learning from Nice I was short-lived among Irish political elites. With the second rejection of a

⁷⁰ Laeken Declaration, European Navigator, available at <http://www.ena.lu/> accessed on May 30, 2010

⁷¹ Article 48 of the Treaty of the European Union, Consolidated Versions of the Treaty on European Union and the Treaty Establishing the European Community, available at <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf> ; accessed on June 20, 2010

⁷² *Crotty v. An Taoiseach* [1987], Supreme Court of Ireland Decisions, available at <http://www.bailii.org/ie/cases/IESC/1987/4.html> ; accessed on May 12, 2010

⁷³ John O'Brennan, *Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty*, Parliamentary Affairs, Vol. 62, No. 2, (2009), 259, 258-277

European treaty by the Irish electorate in 7 years, Ireland's EU referendum experience has been transformed.⁷⁴

5.2 Lisbon Treaty Referendum in Ireland 2008

The Twenty-eighth Amendment of the Constitution Bill was published on March 6, 2008 as a result of government's approval of the text of the changes of the constitution.⁷⁵ The bill allowed for Ireland to Opt-out from the change of unanimous decisions to qualified majority voting in the sector of police and judicial affairs. Moreover, the bill kept the restriction on the Irish participation in an EU common defense agreement.

Referendum was held on June 12, 2008 that resulted the defeat of the bill by 53,4% to 46,6% with a turnout of 53.1%, thus rejecting the Lisbon Treaty.⁷⁶ As a result of referendum among 1 per cent of the EU population of almost 500 million citizens, Lisbon Treaty was rejected and represented a further challenge in the European Union's reform process. This outcome described by some as 'a shock' for European Integration and by others as 'a triumph of democracy'.⁷⁷ The decision set number of questions concerning the future of the treaty designed to bring more European integration. Referendum result put the government in hard situation. The first reaction from the EU was to continue the path. European Politicians sharply stated that in spite of Irish Rejection, renegotiation of the treaty was not an option⁷⁸ and Ireland had to find the Irish solution of the treaty. The European Commission says that

⁷⁴ Jane O'Mahony, 'Ireland's EU Referendum Experience', Vol. 24, No. 4, (2009), 429, 429-446

⁷⁵ Twenty-Eighth Amendment of the Constitution Bill 2008, official website of the Houses of Oireachtas, available at <http://www.oireachtas.ie/viewdoc.asp?docID=8981> accessed on June 30, 2010

⁷⁶ Ireland Rejects the Lisbon Treaty, RTE news, 13 June 2008, available at <http://www.rte.ie/news/2008/0613/eulibson.html> accessed on May 30, 2010

⁷⁷ Maurizio Carbone, 'From Paris to Dublin: Domestic Politics and the Treaty of Lisbon', Journal of Contemporary European Research, Vol. 5, No. 1, (2009), 44, 43-60

⁷⁸ Stephen Quinlan, 'The Lisbon Treaty Referendum 2008', Irish Political Studies, Vol. 24, No. 1, (2009), 116, 107-121

nations should continue to ratify the treaty, designed to streamline decision-making. As for the Prime Minister Brian Cowen said he respected the vote of Irish people, but it had caused a "difficult situation" that had "no quick fix". Ireland has no wish to halt the progress" of the EU.

Leaders of the No campaign said the vote was a "great result for Ireland". Gerry Adams, the president of Sinn Fein, said: "People feel secure at the heart of Europe, but they want to ensure there's maximum democratic power." ⁷⁹

5.2.1 Referendum Campaigns

Lisbon Treaty campaigning in Ireland started in April 2008 characterized by diverse campaigning tools and interesting slogans having impact on shaping the public opinion in Ireland. Emerging camps were traditionally divided according to their prospective visions about the Lisbon Treaty and its long-term outcomes for the Europe: parties and interest groups being favour and opposed to the treaty. In addition, there were some other entities being neutral in the event.

Once European Union was regarded as a country's vital interest in its external relations, the position was strengthened by the main political parties in the country favoring the ratification of the Lisbon Treaty *making the Europe in 21st Century*⁸⁰. Governmental Parties Fianna Fail and Progressive Democrats campaigned on behalf of the European Treaty. Taoiseach Brian Cowen had promised a robust campaign in which every elected representative would participate. It will be "the most extensive referendum campaign undertaken by Fianna Fáil in many years", he said at the launch of the treaty's promotional activities. Progressive Democrats known as pro-free market party, its campaign focused

⁷⁹ Ireland rejects EU reform treaty, BBC News; Friday, 13 June 2008; available at <http://news.bbc.co.uk/2/hi/7453560.stm>; Accessed on May 15, 2010

⁸⁰ Lisbon Treaty and Ireland, Official website of the European Union, available at http://ec.europa.eu/ireland/lisbon_treaty/lisbon_treaty_progress/index_en.htm accessed on June 10, 2010

particularly on the economic benefits of Ireland's membership of the EU.⁸¹ It is also important that two largest opposition parties Fine Gael and Labour Party were in the favour of the treaty. Fine Gael Party leader Enda Kenny urged supporters to "hold their fire" against Fianna Fáil for now and let the treaty pass. He has also called on farmers to refrain from using their vote on the treaty as a means of influencing the current world trade talks. As for Labour Party's spokesperson on European affairs, Joe Costello, said he would manage a campaign with a strong focus on door-to-door canvassing in addition to extensive outdoor advertising and leafleting.⁸²

Support for the treaty was intensive in the Dail and Green Party's majority of the members agreed the ratification but the party itself did not participate in the referendum debate as at a special convention on 19 January 2008, leadership of the party failed to secure a two-thirds majority needed to adopt the official party policy to make support for the referendum.⁸³

Business organizations such as Irish Business and Employers Confederation (IBEC), the Irish Chambers of Commerce, the Irish Congress of Trade Unions (ICTU) the Small Firms Association (SFA) and were prominently campaigning in favour of the Lisbon Treaty.⁸⁴ These organizations focused about economic benefits deriving from EU-Ireland relationship and argued that treaty will encourage Irish Economy in this challenging time. IBEC Director of EU and International Affairs, Brendan Butler said: "As one of the most open economies in the world, our dependence on exports far exceeds that of larger countries. In fact we export over 85% of everything we produce. Previous treaties have brought great benefits and have

⁸¹ Main Players; No side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelisbontreaty/mainplayers/no.html>; accessed on May 25, 2010

⁸² Ibid

⁸³ Majority of Greens back Lisbon Treaty, Official website of the Green Party in Ireland, available at http://www.greenparty.ie/en/news/latest_news/majority_of_greens_back_lisbon_treaty accessed on June May 25, 2010

⁸⁴ John O'Brennan, Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty, Parliamentary Affairs, Vol. 62, No. 2, (2009), 261, 258-277

opened-up many new opportunities for Irish business. This treaty will do the same.⁸⁵ However, diversified opinions have existed among business groups. The Irish Small and Medium Enterprises Association canvassed members in April 2008 and reported that on the basis of the response a majority would vote against Lisbon Treaty. A survey conducted by the Irish Times, Irish Daily Newspaper, targeting at executives in 500 businesses in Ireland reported that while 40 per cent would vote in favour of the treaty, 15 per cent would vote against and 45 per cent were undecided.⁸⁶

Another important supporter of the Lisbon Treaty was Irish Alliance for Europe (IAE), a civil society umbrella group comprised of academics, business people, lawyers, farmers, students and Trade Unions. Among the 34 member organisations of its business "pillar" the Business Alliance for Europe are IBEC, the Construction Industry Federation, the Irish Banking Federation and the Irish Exporters Association.⁸⁷ The most prominent non-party organization Irish Alliance for Europe established in 2002 during second referendum that brought together the main parties including former Taoiseach Garret FitzGerald and former EU commissioner Michael O'Kennedy.⁸⁸ The Alliance argued that the Lisbon Treaty protects Irish interests and values. The benefits that had resulted from membership were also emphasized by supporters of the treaty, while the limited nature of Irish Commitments on sensitive issues such as defense, European army and abortion were highlighted.⁸⁹ These sensitive issues have been strongly emphasized by the No to Lisbon Campaign parties and political groups.

⁸⁵ Yes vote for Lisbon Treaty a vote for the Irish economy, April 2008, Official Website of IBEC, Newsroom, available at <http://www.ibec.ie/IBEC/Press/PressPublicationsdoclib3.nsf/vPages/Newsroom~yes-vote-for-lisbon-treaty-a-vote-for-the-irish-economy-06-04-2008?OpenDocument> accessed on June 2, 2010

⁸⁶ Brian Girvin, 'Ireland: more referendums anyone?', in National Politics and European Integration: From the Constitution to the Lisbon Treaty ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 137

⁸⁷ Main Players; Yes side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelisbontreaty/mainplayers/yes.html> ; accessed on May 25, 2010

⁸⁸ The Irish Times, May 3, de Breadun 2008 'Alliance of public figures give the treaty their support' in Stephen Quinlan, 'The Lisbon Treaty Referendum 2008', Irish Political Studies, Vol. 24, No. 1, (2009), 109, 107-121

⁸⁹ Brian Girvin, 'Ireland: more referendums anyone?', in National Politics and European Integration: From the Constitution to the Lisbon Treaty ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 136

The only party represented in Oireachtas that opposed the treaty was Sinn Féin. It played an important role in the anti - Nice Treaty campaign and expressed its opposition towards Lisbon treaty as well. Although the party believes in the Ireland's place in Europe, Sinn Féin pushed the "Vote No for a Better Yes" argument, while raising concerns about the treaty's impact on workers' rights, neutrality and Ireland's ability to stop policies that are not in its interests.⁹⁰ Party formulated its opposition in nationalist terms, focusing on loss of sovereignty, the weakness of small states, the loss of a Commissioner and the threat to democratic governance.⁹¹ The party claimed that government could renegotiate a better deal.

Another opposition groups concerned with welfare issues and social policy were People's Movement and the People before Profit Alliance. Both emphasized that "Lisbon Treaty constituted a vehicle for the privatization of public services. Other core issues voiced among these groups included the alleged neoliberal bent of the European Commission and the unelected Brussels Bureaucracy.⁹² Parties fear was that EU was moving to the Super-state stage that would have negative impact on the Irish sovereignty. What is at issue is whether or not the Lisbon Treaty will result in a more democratic, accountable, transparent and demilitarized EU. We in the People's Movement believe it will not," states Patricia McKenna, Former Green MEP Chairperson of the movement in the official document by the party "A review of the Provisions of the Treaty of Lisbon, May 2008."⁹³

Catholic fundamentalist group Coir, represented as a National movement of Irish people striving for justice, sovereignty and Integrity of the country,⁹⁴ appealed Irish people

⁹⁰ Main Players; No side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelisbontreaty/mainplayers/no.html>; accessed on May 25, 2010

⁹¹ Brian Girvin, "Ireland: more referendums anyone?"; in National Politics and European Integration: From the Constitution to the Lisbon Treaty ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 136

⁹² John O'Brennan, "Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty"; Parliamentary Affairs, Vol. 62, No. 2, (2009), 262, 258-277

⁹³ A review of the provisions of the Treaty of Lisbon, May 2008, by People's Movement, available at <http://www.people.ie/contreaty/lisbon1.pdf> accessed on June 17, 2010

⁹⁴ Official Website of Coir Campaign, available at <http://www.coircampaign.org/index.php/who-we-are-home> accessed on June 15, 2010

not to vote in favour of the Lisbon Treaty. Focusing on the Charter of Fundamental Rights, the group claimed that Lisbon Treaty would assist the development of the prostitution, euthanasia and abortion in the country. In fact, the group went against the official position of the Irish Bishops, argued that the Charter of Fundamental Rights, annexed to the Treaty and given legal status, would force Ireland to legalize the abortion, gay marriage, prostitution and euthanasia⁹⁵ as Irish Bishop Conference stated the Catholic Church's position that the treaty does not have the negative impact on Ireland's constitutional ban on abortion.⁹⁶

Peace and Neutrality Alliance (PANA) was also against the treaty with the main argument that European Union is moving towards the militarization and it will have negative influence on Irish Neutrality. PANA established in 1996 and until today recognizes the United Nations as the Institution through which Ireland should pursue its security concerns. Ireland should seek to promote European and international security through a policy of disarmament and demilitarization and should therefore oppose the militarization of the EU,⁹⁷ statement set in the objectives of the alliance.

Libertas campaign was one of the largest throughout the country. It insisted that Lisbon Treaty was Bad for Ireland, Bad for Europe and Bad for Business. Organization claimed that it was not Eurosceptic, but wished to protect Ireland's economic position within an increasingly competitive environment.⁹⁸ Party's main focus was tax policy of the country that might have been threatened by Lisbon Treaty adoption. For the first time in a referendum campaign, a No group had a significant amount of money to spend on their campaign, as anecdotal estimates of the Libertas spend ranged from 1.3 to 1.8 million EUR.⁹⁹ It is

⁹⁵ Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 117

⁹⁶ <http://news.bbc.co.uk/2/hi/8260836.stm>

⁹⁷ About PANA, official website of the PANA, available at <http://www.pana.ie/about.html> accessed on June 1, 2010

⁹⁸ Brian Girvin, Ireland: more referendums anyone?, in National Politics and European Integration: From the Constitution to the Lisbon Treaty ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 136

⁹⁹ Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 117

noteworthy that group was led by Tuam-based multi-millionaire businessman Declan Ganley, with connections to American defense and security interests.

Other minor parties being against the Lisbon treaty included the Socialist Party, the Workers Party and Socialist Workers Party. Independent TDs Tony Gregory and Finian McGrath, Independent MEP Kathy Sinnott advocated a No vote as well.¹⁰⁰ Technical, Engineering and Electoral Union (TEEU) also advised its members to vote no. In addition, National Platform led by the Anthony Coughlan has been campaigning against the European Integration since 1970 known as Irish Sovereignty movement at that time.¹⁰¹ All opponents agreed that the treaty could be renegotiated and that Ireland could get better terms by voting No

First referendum campaigns on Lisbon Treaty have been criticized by different scholars arguing about the aspects having influence on the electorate making the decision on Lisbon Treaty in June 2008. Apparently evident tendency appeared, No camps focused on sharp messages easily to understood, which provided votes with easy to process (negative) images of the EU and the Lisbon Treaty.¹⁰² The emphasized the sensitive issues for the Irish society such as neutrality, abortion, taxation in relation to the Lisbon Treaty, stating that Europe will hamper Irish sovereignty in these areas and some camps even claimed that union is moving to a Super-state. Coir, campaigning against the treaty, erected posters bearing messages such as "People died for your freedom - don't throw it all away."¹⁰³ Another features an image of three monkeys and the slogan: "The New EU Won't See You, Won't Hear You, Won't Speak For You."¹⁰⁴ Libertas, running national billboard campaign, main Slogan was: "Europe has been great for Ireland: Let's keep it in that way." Furthermore, Declan Ganley's Libertas

¹⁰⁰ Main Players; No side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelisbontreaty/mainplayers/no.html>; accessed on May 25, 2010

¹⁰¹ John O'Brennan, "Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty", *Parliamentary Affairs*, Vol. 62, No. 2, (2009), 262, 258-277

¹⁰² *Ibid* 271

¹⁰³ Irish Examiner, Archives, 15 May 2009, available at <http://archives.tcm.ie/irishexaminer/2008/05/15/story62801.asp> accessed on June 2, 2010

¹⁰⁴ Main Players; No side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelisbontreaty/mainplayers/no.html>; accessed on May 25, 2010

ran a high profile of campaign, making effective use of internet platforms (not all groups made a very effective use of internet).¹⁰⁵ In addition, door-to-door canvas, traditional promotional campaign, was more intensively used by the No side, while government party, Fianna Fail canvassed in some areas. Evidently, these sharp focused messages have been better memorable and eye-catching for the people of Ireland, rather than Yes campaigns.

Yes camps was often criticized and characterized as a government's failure to pass the bill and being lazy or slow in its campaign.¹⁰⁶ They tried to counterbalance No camps arguments and therefore were in a defensive position, rather than influential. Yes campaigners failed to construct a narrative on the Treaty, exhorting voters to trust them and vote Yes.¹⁰⁷ Another feature of Yes camps was identifying politicians with the treaty campaigning putting their photographs on the posters. In case of Labour Party politicians the words Vote Yes to Lisbon were so small as to be barely visible, giving a clear message of lack of enthusiasm for Lisbon.¹⁰⁸

It is important to mention that media coverage was balanced during the campaign allowing the equal air time on TV and radio according to the Irish law resulting from the Court judgments referred to as McKenna and Coughlan Judgments.¹⁰⁹

However, credibility and legibility of the Referendum Commission was also questioned during its first pre-referendum activities. Referendum Commission is an independent body established under the Referendum Act 1998. The Commission aims to deliver information to the public and perform impartially, explain the subject matter of referendum proposals, to promote public awareness of the referendum and to encourage the electorate to vote at the

¹⁰⁵ Brigid Laffan and Jane O'Mahony, *Ireland and the European Union*, The European Union Series (Palgrave Macmillan, 2008), 117

¹⁰⁶ Cathal M. Brugha, *Why Ireland Rejected the Lisbon Treaty*, *Journal of Public Affairs*, 8, (2008), 308, 303-308

¹⁰⁷ Brigid Laffan and Jane O'Mahony, *Ireland and the European Union*, The European Union Series (Palgrave Macmillan, 2008), 117

¹⁰⁸ Cathal M. Brugha, *Why Ireland Rejected the Lisbon Treaty*, *Journal of Public Affairs*, 8, (2008), 306, 303-308

¹⁰⁹ Jane O'Mahony, *Ireland's EU Referendum Experience*, Vol. 24, No. 4, (2009), 434, 429-446

poll.¹¹⁰ The Chairman of the Lisbon Treaty Referendum (2008) Commission is Mr Justice Iarfhlaith O'Neill, Judge of the High Court.¹¹¹ In order to implement its mandate, the Commission sent out a summarized version of the Treaty to every home in the country and established the website that contained the full text of the treaty. It advertised on television, radio and in the print media as well as on networking websites such as Bebo and Facebook, in an attempt particularly to attract attention of young people.¹¹² However, many people complained that the text was too complex to consider and it was not helpful. John Lawrence published an article on May 15, 2008, where he brought the arguments of almost all opposition parties or groups of the Lisbon Treaty stating that Referendum Commission failed to explain and answer on sensitive issues for Ireland (mentioned in No campaigns) in favour of the Lisbon Treaty.¹¹³

Yes campaign image was damaged when Mr. Cowen, the Taoiseach, admitted to the Danish TV journalist Mette Fugl that he had not read the treaty from cover to cover.¹¹⁴ Moreover, the performance of Referendum Commission also became a matter of discussion when, in a press conference called to bring clarity to the debate, Chairman was embarrassed when he could not explain one provision of the treaty when asked by a journalist. Additionally, split in the sectional interests, such as farmers organization brought negative consequences for the Yes campaign. Especially IFA required the government to use the veto power in WTO negotiations, otherwise would withdraw their support of the treaty.¹¹⁵

¹¹⁰ Referendum Commission, Official Website, available at <http://www.refcom.ie/en/> accessed on June 25, 2010

¹¹¹ The Lisbon Treaty by Referendum Commission, 2008, available at <http://www.irishtimes.com/focus/thelisbontreaty/referenduminformation/commission/english.pdf> accessed on June 15, 2010

¹¹² Stephen Quinlan, 'The Lisbon Treaty Referendum 2008', Irish Political Studies, Vol. 24, No. 1, (2009), 110, 107-121

¹¹³ <http://web.ebscohost.com/ehost/detail?vid=10&hid=6&sid=c855e4a5-7f29-4860-809f-1beb19472011%40sessionmgr114&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#db=nfh&AN=9FY556813566>

¹¹⁴ Matt Quirtrup, 'Rebels without a Cause? The Irish Referendum on the Lisbon Treaty', The Political Quarterly, Vol. 80, No.1, (2009), 62, 59-66

¹¹⁵ Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 118

Political context of the country also has to be taken into consideration when discussing the campaign for the EU treaty in the country and government's position. While the Lisbon treaty not an easy sell, as admitted by the Irish EU commissioner,¹¹⁶ the government was not so active to persuade the electorate to vote yes. This might have been reasoned by the fact that Taoiseach Bertie Ahern's attention was focused on an investigation into his finances. As a result he resigned¹¹⁷ and passed the leadership to Brian Cowen. New Taoiseach could not easily make an influential message to the electorate to positively respond to the Lisbon Treaty ratification in Ireland. But one of the most important findings in June 2008 polls is that the vote against the Lisbon Treaty was not convinced as a vote against government. Indeed, the government retained its support among the electorate and it is arguable that the vote was a clear rejection of the Lisbon Treaty.¹¹⁸

Campaigning in a referendum is like solving an equation with many unknown variables and in which many singular events combine to create unforeseen circumstances.¹¹⁹ We have discussed some main variables of the campaign on Lisbon Treaty referendum in 2008 in this chapter, however, the main question: what kind of role referendum played in Ireland in relation to the Lisbon Treaty ratification, remains interesting. We will try to address this issue later below.

¹¹⁶ Lisbon treaty not an easy sell, admits Irish EU commissioner, May 22, 2008, News, Euobserver, available at <http://euobserver.com/9/26193> accessed on June 10, 2010

¹¹⁷ Bertie Ahern to leave office on 6 May, 2 April 2008, News, RTI News, available at <http://www.rte.ie/news/2008/0402/ahernb.html> accessed on June 5, 2010

¹¹⁸ Brian Girvin, Ireland: more referendums anyone?, in National Politics and European Integration: From the Constitution to the Lisbon Treaty ed. Maurizio Carbone, (UK: Edward Elgar Publishing Limited, 2010), 137

¹¹⁹ Matt Quirtrup, Rebels without a Cause? The Irish Referendum on the Lisbon Treaty, The Political Quarterly, Vol. 80, No.1, (2009), 62, 59-66

5.2.2 Voting and Post-referendum Findings

Lisbon Treaty was rejected on June 13, 2008 at Irish Referendum by a margin of 53.4% to 46.6%. The negative outcome of the referendum was also anticipated according to the preliminary results by Irish Times/TNSmrb poll one week before the referendum. A total of 28.3% of the electorate voted No - compared with 24.7 of the electorate who voted Yes. This constituted a historical peak for the No side which, even in the victory in 2001, had only garnered the support of 19% of the electorate.¹²⁰ The immediate step that was taken by the EU side and Irish government was to investigate the main reasons of rejection, voters attitude towards the Lisbon Treaty and EU in general. Consequently, European Commission issued Flash Eurobarometer survey findings: Preliminary Results in June and Analytical Report in July, 2008. On behalf of the Department of Foreign Affairs of Ireland, the quantitative research was conducted by Millward Brown IMS contributing to the knowledge explaining electorate's behavior in the referendum.

According to the research findings, turnout for the Lisbon referendum was 53%, well in excess of the 35% recorded for the rejection of the Nice Treaty in 2001.¹²¹ The Lisbon Treaty referendum shows the increased level of turnout compared to the Nice Treaty referendums in 2001 or 2002. However, this pattern has resulted in negative dimension as additional voters voted against the treaty: no vote increased from 18 percent of the electorate by the second Nice referendum in 2002 to 28 percent of the electorate at Lisbon Treaty.

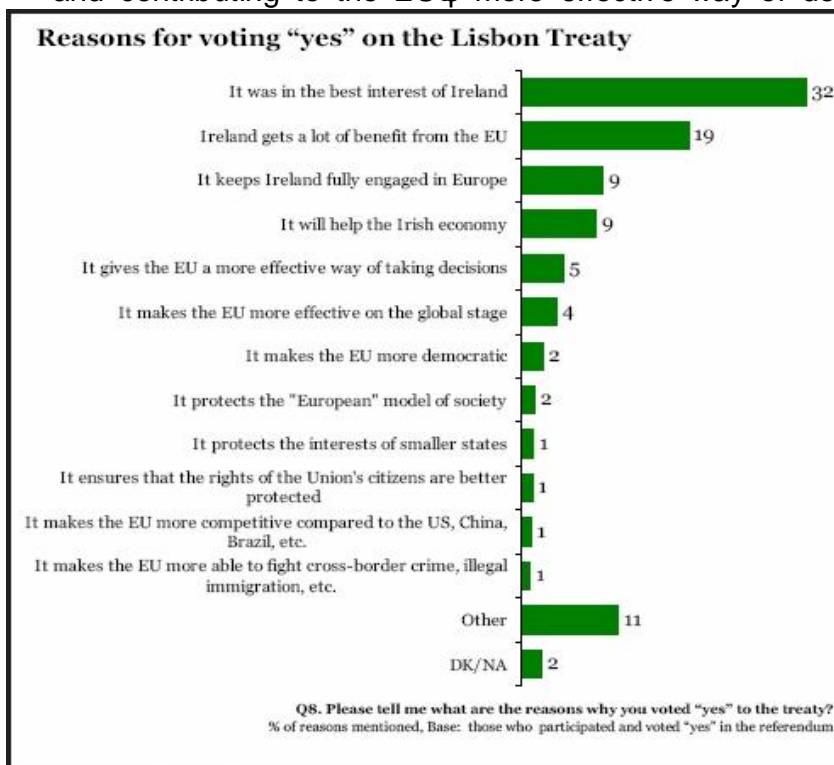
The outcome of the referendum was apparently reasoned by the successful campaigning of political parties or interest groups against Lisbon Treaty. Furthermore, a large majority of Irish citizens (67%) said the 'no' campaign was the more convincing one, while

¹²⁰ 8. John O'Brennan, 'Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty', *Parliamentary Affairs*, Vol. 62, No. 2, (2009), 267, 258-277

¹²¹ 7. Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, (September 2008), 1 available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf> Accessed on June 10, 2010

only 15% said the same about the %yes+ campaign.¹²² The discussion around the treaty among different political parties and interest groups had its impact on the voters' position. The statistics show that a high percentage of people determined their willingness to vote in favour or against the treaty during the campaign. However, once their mind was made up, they were unlikely to change their decision: a large majority of voters (68%) said they did not change their mind on how to vote during the course of the campaign, compared to just 21% who did.¹²³

Yes voters had their primary motivation to vote in favour of the treaty in the referendum. The main argument was that Lisbon Treaty ratification was in Ireland's best interest (32 percent of the answers). Relatively high percentage included the motives such as the benefits for the country; Ireland's engagement in the EU; assistance for Irish economy and contributing to the EU's more effective way of decision-making policy. Other reasons



Flash EB No 245 – Post-referendum survey in Ireland; Analytical report

were based on different arguments: EU becoming more democratic; it protects the European model of the society and the interests of smaller states.

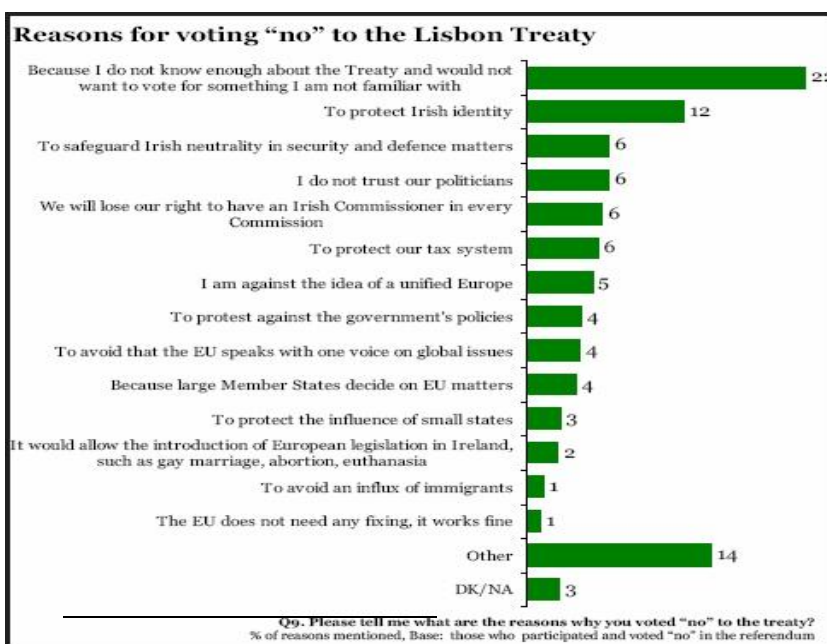
According to the research findings, the following tendency appeared: the voters Yes was based on the positive attitude towards the European Union generally, rather than treaty-specific outcomes.

¹²² Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008), 13, Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 10, 2010

¹²³ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008), 15, Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 10, 2010

This also illustrates and better explains why Pro-European society, such as Yes side, finds it difficult to promote and support the Treaty in its own right.¹²⁴

Despite the sharp and memorable slogans used by the No campaigners, the biggest percentage of the reason for voting against the Lisbon Treaty was lack of knowledge (22% of all answers), followed by the desire to protect Irish identity (12% of all answers). The chart illustrates clearly wide range of determinants for No voters that were much more treaty-specific answers. Their concerns were comprised of the aspects that also have been strongly promoted by opposition parties and groups of the treaty during referendum campaigns. By voting against the treaty, Irish public demonstrated their lack of trust in politicians generally; a wish to safeguard Irish neutrality in security and defence matters; the desire to keep an Irish Commissioner in every Commission; the need to protect the Irish tax system (in each case, 6% of all answers) as well as interpreting their vote as a vote against a %unified Europe+ (5% of all answers). Importantly, these sensitive issues for the Irish electorate emerged as a valuable information during the negotiation of the second referendum on Lisbon Treaty.



Another imperative perception by the No voters in relation to the consequences of the referendum was that impressive 76% of %no+ voters supported the view that rejection this time would allow the Irish government to renegotiate %exceptions+ within the treaty, whereas only 38% of %yes+ voters held this opinion.¹²⁵

¹²⁴ Flash EB No 245 – Post-referendum survey in Ireland; Analytical report Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, September 2008; available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf> accessed on June,10, 2010

¹²⁵ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008), 26, Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 10, 2010

As for the not voting part in the referendum were categorized as voluntary and circumstantial abstention. The main reason for voluntary abstention was voluntary (63%). 46 % out of 63% did not vote due to the lack of knowledge of understanding the treaty.¹²⁶ Analyzing the socio-demographic profiles of the non-voters segment, statistics show that younger people were reluctant to participate in the referendum unlike older generation. (64% of the 18-24 year-olds abstained compared to less than a third of the 55+ age group, 31%). Also, it is important to note that only 39% of the self-employed and 44% of non-working individuals abstained.¹²⁷

Objectively assessing the Treaty Knowledge, Millward Brown IMS research provides valuable information: respondents identified loss of Commissioner (for 5 of every 15 years) as top of the list at 65%. Other key elements/themes of the Treaty were also identified. However, the endorsement of ending of Ireland's right to decide its own corporate tax rate. 43%, erosion of Irish neutrality. 42%, end of control over abortion. 34%, and introduction of conscription to a European army. 33% as being elements of the Lisbon Treaty, demonstrates the level of confusion that surrounded the Lisbon Treaty debate.

The main findings show that attempt of the government to deliver more information about the European Union to the public by introducing the institution of a National Forum on Europe since 2001 have failed to bridge the gap between the largely pro-European elites and the mass of Irish citizens.¹²⁸ Although Taoiseach was himself engaged in the debates about the Lisbon Treaty,¹²⁹ the forum lacked the adequacy of reporting about the European affairs.

¹²⁶ Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, (September 2008),2, available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf> Accessed on June 10

¹²⁷ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008), 7, Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 10 7

¹²⁸ John O'Brennan, 'Ireland Says No (again): the 12 June 2008 Referendum on Lisbon Treaty', Parliamentary Affairs, Vol. 62, No. 2, (2009), 275, 258-277

¹²⁹ Taoiseach engages in robust debate with Forum Members on Lisbon Treaty, National Forum on Europe, available at <http://www.forumoneurope.ie/index.asp?locID=366&docID=1679> accessed on June 20, 2010

The same applies to the *Communicating Europe* that could not find the common language with Irish people to send concrete messages about Brussels issues.

Although the outcome shows increase negative answers for the new treaty, Irish people demonstrate that there is a vital interest for the country to cooperate with European Union. A significant majority (60%) of the electorate, and particularly among those who voted in the referendum (68%), believe that Ireland's interests are best pursued by remaining fully involved within the EU.¹³⁰ In this respect, respondents of the survey mentioned that the issue of protection of workers' rights as being *very important* more than any other issue.

Analyzing the factors and circumstances having impact on the electorate's behavior, we can state that rejection of the Lisbon Treaty did not mean the vote against the European Union. However, some key areas revealed to be the most sensitive for the Irish people in relation to the Europe to maintain their sovereignty and protect their national interests.

Finally, *while* domestic politics played a role, it was only one factor among many. The complexity just summarized is undeniable. Equally undeniable is the need to address the issues and the underlying processes involved, not just now and not just in the run-up to a referendum but on an on-going and long-term basis, as stated in the governmental report of referendum analysis: *Attitudes and Behavior in the Referendum on the Treaty of Lisbon*.¹³¹

¹³⁰ Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, (September 2008), 3, available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf>

Accessed on June 10, 2010

¹³¹ Behaviour in the Referendum on the Treaty of Lisbon, Report prepared for the Department of Foreign Affairs ; UCD Geary Institute University College Dublin; 2009

Available at <http://dfa.ie/uploads/documents/ucd%20geary%20institute%20report.pdf> accessed on May 15, 2010

5.3 Key Issues of National Interest of Ireland

Comprehensive discussion of the referendum campaigns and the post-referendum research findings gives a clear picture about Irish people's attitude towards Ireland - EU relationships backed up with its positive previous experience. On the other hand, concerns about Europe's impact on national level became evident. Several issues were considered in the debate by Yes and No camps that fell under the national interests of the country including: loss of Irish Commissioner, fears towards EU's CFSP in regard to Irish neutrality, losing control over tax policy, Charter of Fundamental Rights' influence on socio-ethical issues in Ireland and workers' rights. These topics have been actively used by the No campaign leaders and negative consequences deriving from the Lisbon Treaty were emphasized. The clear and sharp messages have shaped the public opinion around the treaty especially in the circumstances when generally the level of knowledge of the treaty was very low. Across all focus groups the level of understanding of the Lisbon Treaty is best described as fairly poor.¹³² Later, government had to bring Irish public desire at EU negotiation table to bring the positive outcomes for the country maintaining national sovereignty over sensitive issues for Ireland.

In Ireland different understandings about the threats from Europe are not innovation brought by the Lisbon Treaty. Nice Referendum of 2001 reflects the same concerns mentioned in 2008 referendum. No campaign's arguments pertained to touchstones in Irish Politics and Irish political culture, as well as to a particular perception of Ireland's national interest. Fears for the future of Ireland's tradition of military neutrality, and fears that the Treaty would open the door to liberal abortion laws were long-standing concerns in the context of EU membership.¹³³ Even earlier, at Maastricht referendum 1992, Neutrality,

¹³² 7. Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, (September 2008), 7, available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf> Accessed on June 10, 2010

¹³³ Karin Gilland, Irish Euroscepticism in Euroscepticism, Party Politics, National Identity and European Integration ed. Robert Harmsen and Menno Spiering, (Amsterdam, New York, NY 2004), 182 citing Gilland, Karin. 2001. Ireland: Neutrality and the International Use of Force. In Public Opinion and the International Use of Force, eds. Philip Everts and Pierangelo Isernia, 141-162. London: Routledge.

sovereignty and independence, and the threat integration posed to traditional, Catholic values were recurring motifs of the debate. The treat of possible conscription to a common European army even mooted.¹³⁴

Neutrality . consequently, it is not surprisingly that issue of Neutrality became extremely important matter in regard to the EU's CFSP and Ireland was cautious about the possible results that might be brought by the Lisbon Treaty. The argument was explicitly supported by the Sinn Fein as well as PANA claiming that %ooperation on defense matters between member states, Irish children could be conscribed to a European Army at some point in the future.¹³⁵ Once the sensitive issue was concerned, negative perception of the Treaty among Irish public might have established especially when the topic of neutrality emanates from the historical perspective of the country. %n the 1930s Ireland became disillusioned with the collapse of collective security in relation first to Manchuria and later Abyssinia, and decided to remain neutral in an impending Second World War. Since that time Ireland maintains a public stance of neutrality.¹³⁶

Loss of Commissioner . Another emotive issue for Ireland as a small country was to have representation at EU level. This idea was advocated by the Sinn Fien Leader Gerry Adams by the message %Save Our Commissioner . Vote No+reaching the people in Ireland. Ireland insisted to maintain its role in the Commission securing more bargaining clout along with other 27 countries in the Union. Garret Fitzgerald, former Minister for Foreign Affairs of Ireland mentions that for the %Commission's exclusive right of initiating Community legislation is of crucial importance for the smaller member states, because it secures them against the danger of larger states seeking to advance their own interests by determining the shape of future EC Legislation. Therefore, a prime objective of Ireland's EC policy must to preserve this role of the Commission against any attempts to weaken it. Ever since then this has been a

¹³⁴ Brigid Laffan and Jane O'Mahony, Ireland and the European Union, The European Union Series (Palgrave Macmillan, 2008), 111

¹³⁵ Stephen Quinlan, %The Lisbon Treaty Referendum 2008+, Irish Political Studies, Vol. 24, No. 1, (2009), 111, 107-121

¹³⁶ 6. Garret FitzGerald, %Ireland and the European Union+, Radharc, Vol. 3 (2002), 124, 123-135

key element of Irish EC policy¹³⁷ However, it is also important to note that the argument was, in fact, misleading. According to the existing Nice Treaty legally in force at that time, loss of Commission representation is provided by early 2009, while according to the Lisbon Treaty Commissioners would be capped at two-thirds of the number of member states after 2014.¹³⁸ However, the collective utilization of such a Treaty-defined escape clause would provide the Irish government with some leverage¹³⁹ at the EU negotiation table.

Socio-ethical Issues - Coir, catholic fundamentalist group, propagandized the idea that Charter of Fundamental Rights would lead to the changes in Irish law on the abortion. Targeting the traditional Catholics, Coir claimed that prostitution, euthanasia and gay marriage might be legalized as well. Coir also tapped into the anti-establishment, anti-authority and anti-politician mood in the country, as Irish Times of June 7 reported. Socio-moral issues have been another point of the discussion during the previous referendums as well as mentioned above.

Taxation Policy - Maintaining economic sovereignty through having control over taxation policy was another idea advocated by the Libertas along with People's movement No camp. Due to the fact that low tax rates in the country greatly contributed to the economic development, Irish people wanted to maintain the control over the taxation policy and have economic sovereignty in this regard. No camps argued that Lisbon Treaty might intervene in Irish tax policy as "harmonization must take place if it is necessary to avoid distortion of competition".¹⁴⁰ A review of the provisions of the Treaty of Lisbon prepared by the People's movement stated: That national differences in company taxes constitute "distortions of competition" would undoubtedly be the main argument after Lisbon for harmonizing indirect taxes on companies, an issue that is especially sensitive in Ireland. The mandatory "shall

¹³⁷ Ibid 130

¹³⁸ 8. Hugo Brady, "Last Chance for Lisbon: Ireland's EU Referendum", (UK: Center for European Reform, 2009), 5, available at http://www.cer.org.uk/pdf/bn_lisbon_22sept09.pdf accessed on May 4, 2010

¹³⁹ 1. John O'Brennan, "Ireland and the Lisbon Treaty: Quo Vadis?", Centre for European Policy Studies, No. 17 (2008), 4, available at <http://www.ceps.eu/node/1565> ; accessed on May 1, 2010

¹⁴⁰ A review of the provisions of the Treaty of Lisbon, May 2008, by People's Movement, available at <http://www.people.ie/contreaty/lisbon1.pdf> accessed on June 17

adopt+ makes it clear that there would be an obligation on member-states to harmonize company taxes, even though there is now a requirement of unanimity, and some states, including Ireland, are against any change.

Workers' Rights – Although workers' rights were not nominated as a matter of concern among electorate, when asked which issues are important in light of the referendum, Workers' rights was nominated by Yes and No voters as well as abstainers as being the most important issue, with 53% overall believing this to be very important. Furthermore, nearly half (45%) believe that Ireland retaining control over its public services was very important.¹⁴¹ The welfare issues and social policy were highlighted by People's Movement and the People before Profit Alliance: "Lisbon offers no protection for workers rights and offers nothing to millions of unemployed across Europe."¹⁴² They emphasized strongly their view that the Lisbon Treaty leads to the privatization of Public Services and it undermines workers' rights "subservient to the free market". The argument was supported by other No camp groups: Sinn Fein, Socialist Party.¹⁴³

5.4 Roadmap to the Second Referendum

Finding the solution from the impasse became a key priority for the Irish Government as well as for the European Union. A new flow of negotiations have been launched to pave the way forward and find a compromise between national and European levels. It was obvious that European Political leaders would not allow the second reflection period to take place that has happened in the EU after Dutch and French No to the Constitutional Treaty. Lisbon Treaty was alive and 19 European countries having already ratified the treaty by that

¹⁴¹ Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, (September 2008), 25, available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf> Accessed on June 10, 2010

¹⁴² "YES vote will have grave consequences for Ireland and Europe," People's for Profit Alliance, 3,10,2009 available at <http://www.people-before-profit.org/taxonomy/term/24> accessed at May 20, 2010

¹⁴³ Main Players; No side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelisbontreaty/mainplayers/no.html>; accessed on May 25, 2010

time could not have been underestimated. Summit for the next week was appointed, engaging both sides in a bout of frantic shuttle diplomacy.¹⁴⁴

Two days before the European Council of June 19-20 would be held; the General Affairs and External Relations Council discussed the referendum results. Irish Foreign Affairs Minister, Micheál Martin at that time restrained from the offering immediate concrete proposals: "The people's decision has to be respected and we have to chart a way through... It is far too early for proffering any solutions or proposals. There are no quick fix solutions. He also stated that the reasons of the No were far from clear.¹⁴⁵ General Affairs and External Relations Council President, Slovenian Foreign Minister Dimitrij Rupel, said: "We regret what has happened but we do not underestimate this event. Democracies have to respect the will of the people. Most Member States believe the reforms are necessary," he maintained.¹⁴⁶

At European Council Meeting member states agreed to take stock of the situation based on the evaluation that had to be provided by the Taoiseach Brian Cowen. The European Council also agreed that more time was needed to analyse the situation. It noted that the Irish government will actively consult, both internally and with the other Member States, in order to suggest a common way forward. The next date for was set on September 2008.¹⁴⁷ At Irish National Assembly Cowen said that he would deal with what was the main focus of the meeting from an Irish perspective . that is to say the issue of the Lisbon Treaty

¹⁴⁴ CEPS, Ireland's plan to resurrect the Lisbon Treaty to be unveiled at the Brussels summit, commentary, by John Brennan, page 1

¹⁴⁵ 'No quick fix' to Irish No vote+, BBC news, 16 June 2008, available at <http://news.bbc.co.uk/2/hi/7455955.stm> accessed on June 15, 2010

¹⁴⁶ Minister Rupel on the Irish referendum, Official website of Slovenian Presidency of the EU, 16, June, 2008 available at http://www.eu2008.si/en/News_and_Documents/Press_Releases/June/0616MZZ_Referendum.html Accessed on June 30, 2010

¹⁴⁷ Brussels European Council, Presidency Conclusions, 19/20 June 2008; available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/101346.pdf ; accessed on May 20, 2010

following the rejection the previous week by the Irish people of a proposal to amend our Constitution to allow the Government ratify the Treaty.¹⁴⁸

Consequently, the Irish government focused on the results of the referendum and commissioned a research project conducted by the Millward Brown IMS that provided the comprehensive answer to the the question what were the likely areas of concern for Irish people in regard to the Lisbon Treaty. Additionally, Joint Committee on European Affairs started to create a detailed report after examining number of significant issues. These official statistics assisted the government to fill the gap in the knowledge of the referendum result and give profound basement on which future plans could be built. It is also important to note that Irish diplomats made consultations with Copenhagen focusing on the Danish experience in regard to the opt outs from the Maastricht Treaty.¹⁴⁹ In searching for the common way forward French President Nikolas Sarkozy, visited Dublin in July. Sarkozy denied pressuring the Irish initiatives,¹⁵⁰ however, noticed that the country had to find the solution as under French Presidency Lisbon Treaty impasse had to be solved.

At October European Council meeting was agreed that Irish government would continue consultations with the Council of Ministers legal service on the drafting possible declarations on Ireland and the Lisbon Treaty. Taoiseach also represented the analysis of the referendum results. On that basis, the European Council agreed to return to this matter at its meeting in December 2008 with a view to defining the elements of a solution and a common path to be followed.¹⁵¹

¹⁴⁸ Statement by the Taoiseach, Mr. Brian Cowen T.D. to Dáil Éireann on the outcome of the June European Council; Press Release, June 25, available at http://www.taoiseach.gov.ie/eng/Government_Press_Office/Taoiseach's_Speeches_2008/Statement_by_the_Taoiseach,_Mr_Brian_Cowen_T_D_to_Dáil_Éireann_on_the_outcome_of_the_June_European_Council.html accessed on June 30, 2010

¹⁴⁹ Irish officials meet Danes for advice on Lisbon opt-outs, The Irish Times, August 28, 2008, available at <http://www.irishtimes.com/newspaper/prontpage/2008/0828/1219875155770.html> ; accessed on June 28, 2010

¹⁵⁰ Sarkozy denies pressurising Irish, BBC news, 21 July 2008, available at <http://news.bbc.co.uk/2/hi/7516254.stm> ; accessed on June 15, 2010

¹⁵¹ Brussels European Council, Presidency Conclusions, (15/16 October, 2008), 6, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/103441.pdf

accessed on May 20, 2010

The role of the Joint Committee on European Affairs, that closely monitored developments within the European Union since November 1995, became crucial as Ireland had a critical juncture in its relationship with the Europe. A special subcommittee of the Oireachtas Joint Committee on European Affairs was established in October 2008 to build the consensus among all parties on Ireland's future in Europe.¹⁵² In November subcommittee report Ireland's future in the European Union: Challenges, Issues and Options was submitted suggesting that Ireland hold second referendum on a modified treaty of Lisbon. No legal obstacle appears to exist to having a referendum either on precisely the same issue as that dealt with on 12 June or some variation thereof.¹⁵³ The report reaffirmed the crucial importance for Ireland to be at the heart of Europe and maintain this position. Although it reflected number of sensitive areas of national sovereignty for Ireland, subcommittee claimed that it was unadvisable to negotiated opt-outs from Lisbon, as they can potentially mean Ireland losing its right to shape and influence key policy areas. The implications of choosing such a course of action should be thoroughly examined.¹⁵⁴

In addition, the Sub-Committee commissioned another paper about Ireland's Future in the EU: Scenarios and Implications aiming at proposing different alternatives how the Lisbon Treaty ratification in Ireland should proceed. With the aim to identify the range of options available to the Government regarding Ireland's relationship with the European Union and, in particular, the Lisbon Treaty¹⁵⁵ 3 proposals were initiated: Scenarios involving a renewed attempt at ratification; Scenarios whereby Ireland does not ratify the Treaty and other Member

¹⁵² Vaughne Miller, 'The Treaty of Lisbon after the Second Irish Referendum', (Houses of Commons Library; Research Paper, 09/75, 2009), 7, Available at <http://www.parliament.uk/documents/commons/lib/research/rp2009/rp09-075.pdf> accessed on June 19, 2010

¹⁵³ Ireland's future in the European Union: Challenges, Issues and Options, Houses of the Oireachtas Sub-Committee on Ireland's Future in the European Union, (November 2008), 45 available at http://www.oireachtas.ie/documents/committees30thdail/j-europeanaffairs/sub_cttee_eu_01122008-3.pdf accessed on May 10, 2010

¹⁵⁴ Ibid, 5

¹⁵⁵ Behaviour in the Referendum on the Treaty of Lisbon, Report prepared for the Department of Foreign Affairs ; (UCD Geary Institute University College Dublin; 2009), 1, Available at <http://dfa.ie/uploads/documents/ucd%20geary%20institute%20report.pdf> accessed on May 15, 2010

States opt to retain a 27-state approach; Scenarios whereby Ireland does not ratify the Treaty and other Member States seek to progress without Irish involvement.

Different scholars have contributed to the working model how the process should proceed after the Irish No to the Lisbon Treaty. Charles Grant focused on 3 possible scenarios: first, Irish government decided to hold a second referendum; second, the EU governments could use the Croatian accession treaty to help their salvage operation; and according to the third scenario, if Ireland again says No, country might get a semi-detached status.¹⁵⁶ John O'Brennan focused on 4 possible alternatives: Option one was to ignore the referendum result and proceed to ratify the Lisbon Treaty by statute of the Oireachtas; Second scenario meant to ratify parts of the Lisbon Treaty by legislation with a further referendum to follow on defined issues; Another alternative proposed a second referendum on the substantive issue of whether to remain a member of the EU or not and the last choice was to hold second referendum with assurances on tax, CFSP, abortion and Ireland's institutional position attached as declarations to the Lisbon Treaty or with new opt-out protocols attached.¹⁵⁷ The last option was the exactly the model of cooperation worked out by the European Union and Ireland in order to advance the ratification of the Lisbon Treaty in Ireland.

5.5 Legal Guarantees for Ireland

December session of the European Council appeared as a milestone that determined the concrete steps to meet the challenge of the Lisbon Treaty ratification in Ireland. All signs indicated that the Brussels Summit will agree to the Irish proposals and provide Dublin with some crucial room for manoeuvre as it embarks on a second referendum campaign. Following the consultations and research projects that identified the Irish concerns, the

¹⁵⁶ Charles Grant, 'Three scenarios for the Lisbon treaty', (Center for European Reform, 2008), available at http://www.cer.org.uk/articles/61_grant.html ; accessed on June 11, 2010

¹⁵⁷ John O'Brennan, 'Ireland and the Lisbon Treaty: Quo Vadis?', Centre for European Policy Studies, No. 17 (2008), available at <http://www.ceps.eu/node/1565> ; accessed on May 1, 2010

government the presented its requirements at the meeting of heads of member states. As a result of the requirement, the Council agreed on the following issues:

Commissioner to be retained: On the composition of the Commission, the European Council recalls that the Treaties currently in force require that the number of Commissioners be reduced in 2009. The European Council agrees that provided the Treaty of Lisbon enters into force, a decision will be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State.

Guarantee on Taxation: nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the Union's competences in relation to taxation.

Guarantee on Neutrality: the Treaty of Lisbon does not prejudice the security and defence policy of Member States, including Ireland's traditional policy of neutrality, and the obligations of most other Member States.

Guarantee on ethical issues: a guarantee that the provisions of the Irish Constitution in relation to the right to life, education and the family are not in any way affected by the fact that the Treaty of Lisbon attributes legal status to the EU Charter of Fundamental Rights or by the justice and home affairs provisions of the said Treaty.

Workers' Rights: the high importance attached to the issues, including workers' rights, set out in paragraph (d) of Annex 1 will be confirmed.¹⁵⁸

In light of the Commitments agreed at the European Council, Ireland took the responsibility to complete the ratification of the Lisbon Treaty by the end of the term of the Commission at that time.

That unanimous agreement represented ~~an~~ an extremely encouraging response to the concerns of the Irish people;¹⁵⁹ mentioned Taoiseach Mr. Brian Cowen T.D. to Dáil Éireann

¹⁵⁸ Brussels European Council, Presidency Conclusions, 11/12 December 2008, available at

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/104692.pdf accessed on May 20, 2010

on Wednesday 17 December 2008 on the outcome of the December European Council. This agreement apparently demonstrated a political compromise reached at the EU level as a result of intensive consultations and negotiations.

In order to secure the guarantees for Ireland, European Council Meeting in June 2009 was held, becoming the key development in the preparation for the holding a second referendum. At this Summit European Council set the arrangements compatible with the treaty and made the final decisions on legal guarantees to be adopted. The Heads of State or Government of 27 Member states of the EU decided that Annex 1 of the Treaty of Lisbon containing guarantees for Ireland about Right to Life, Family and Education (Section A), Taxation (Section B), Security and Defence (Section C)¹⁶⁰ would ~~at~~ at the time of the conclusion of the next accession Treaty, set out the provisions of the annexed Decision in a Protocol to be attached, in accordance with their respective constitutional requirements, to the Treaty on European Union and the Treaty on the Functioning of the European Union. Also Solemn Declaration on Workers' Rights, Social Policy and other issues (Annex 2) and unilateral declaration of Ireland (Annex 3) would become part of the treaty by means of protocol. In addition an important agreement was reached among the Member States that after Lisbon Treaty enters into force, a decision would be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State.¹⁶¹

Institute for International and European Affairs in the document Lisbon - The Irish Guarantees Explained mentions: ~~The~~ The Guarantees respect the two key conditions identified by the Member States: (1) the Lisbon Treaty remains unaltered (as to amend it would require

¹⁵⁹ Statement by the Taoiseach, Mr. Brian Cowen T.D. to Dáil Éireann on the outcome of the December European Council, Department of the Taoiseach, 17 December 2008, available at http://www.taoiseach.gov.ie/eng/Government_Press_Office/Taoiseach's_Speeches_2008/Statement_by_the_Taoiseach,_Mr_Brian_Cowen_T_D_to_Dáil_Éireann_on_Wednesday_17_December_2008_on_the_outcome_of_the_December_European_Council.html ; accessed at May 25, 2010

¹⁶⁰ Lisbon Treaty and Ireland, Official website of the European Union, available at http://ec.europa.eu/ireland/lisbon_treaty/lisbon_treaty_progress/index_en.htm ; accessed on June 10, 2010

¹⁶¹ Brussels European Council, Presidency Conclusions, 19/20 June 2009; available at http://ec.europa.eu/regional_policy/cooperation/danube/documents/council_conclusions.pdf ; accessed on May 20, 2010

other Member States to re-ratify the Treaty, which could be politically difficult in certain countries); (2) that concerns voiced by Irish voters are directly addressed in the form of legally binding clarifications on sensitive areas of Irish sovereignty.¹⁶²

As a result of the intensive negotiations that aimed to overcome the challenges related to the Lisbon Treaty ratification in Ireland, the date for the second referendum was set. Taoiseach Brian Cowen confirmed the Lisbon Treaty referendum will take place on Friday, October 2nd as legislation to allow it go ahead . the 28th Amendment of the Constitution (Treaty of Lisbon) Bill 2009 . had already passed all stages in the Dáil.¹⁶³

5.5 Ireland approves the Lisbon Treaty by Second Referendum

Once the second referendum was confirmed Irish Government pledged to develop more dynamic and proactive strategy to fight for the Yes votes compared to the first referendum campaign. New website was launched *The EU Matters* that targeted to the wide audience of Irish Public. It has explained the importance of the EU for Ireland, delivered the historical overview of the relationship; it showed benefits for the country and European Union's role on the global level.¹⁶⁴ The government has also created the White Paper that provided a comprehensive summary and analysis of the main points of the treaty and focused on the major issues raised during the first referendum. The publication was widely distributed. In addition, department of the Foreign Affairs made a number of official documents available online to make the information better accessible for the public.¹⁶⁵

¹⁶² Lisbon - The Irish Guarantees Explained, (Institute for International and European Affairs, 2009), 1, available at <http://www.iiea.com/publications/lisbon-the-irish-guarantees-explained> ; accessed on June 15, 2010

¹⁶³ Taoiseach sets October 2nd date for referendum on Lisbon, Irish Times, Jul 09, 2009, available at <http://search.ebscohost.com/login.aspx?direct=true&db=nfh&AN=9FY3017749134&site=ehost-live> ; accessed on May 22, 2010

¹⁶⁴ Department of Foreign Affairs website providing with factual information about Ireland's membership of the European Union available at <http://www.eumatters.ie/> ; accessed at June 2, 2010

¹⁶⁵ Department of the Foreign Affairs of Ireland, Lisbon Treaty, available at <http://www.dfa.ie/home/index.aspx?id=34239> ; accessed on June 10, 2010

The Referendum Commission chaired by a senior judge Frank Clarke was also more visible and active during 2009 referendum compared to the previous year. The Commission's primary goal was to deliver factual information about the treaty as well as to encourage people to vote and leave the free space for the society to make up their minds. It was especially important in the circumstances when political parties and campaigning groups were putting forward various arguments about the likely consequences of the referendum decision.¹⁶⁶

No camps in the second referendum have maintained their positions. However, the EP elections had an impact on the camps formation. Since Declan Ganley, the founder of Libertas did not win the seat in European Parliament in June 2009, he kept his word not to participate in No camps again.¹⁶⁷ Although he reaffirmed his position after losing the election, lately he decided to re-enter the fray and oppose the Lisbon Treaty referendum again.¹⁶⁸ The main argument of the No side this time was that treaty would reduce the Irish minimum wages. Coir emphasized the issue of unemployment, reduction of minimum wages that might have been negative consequences of the Lisbon Treaty. Sinn Fain was again opposed to the treaty: "The Lisbon Treaty was a bad deal for Ireland when it was presented to the people last year and it remains the very same bad deal."¹⁶⁹ The argument was backed by the People before Profit alliance and insisted that No vote of Irish people needs to be respected.¹⁷⁰

The governing coalition parties, Fianna Fail and the Greens, and the two main opposition groups, Fine Gael and Labour, supported the ratification of the treaty. Greens Party that was neutral during the 2008 referendum campaign, this time was strongly

¹⁶⁶ Referendum Commission's Lisbon Treaty 2009 official website; available at <http://www.lisbontreaty2009.ie/>; accessed on May 25, 2010

¹⁶⁷ Lisbon Treaty Ratification Monitor . 2nd Issue available at <http://www.tepsa.eu/index.asp?ID=45>; accessed on May 5, 2010

¹⁶⁸ Jane O'Mahony, "Ireland's EU Referendum Experience", Vol. 24, No. 4, (2009), 442, 429-446

¹⁶⁹ Vote NO to the Lisbon Treaty on October 2nd, official website of the Sinn Fein, available at <http://www.sinnfein.ie/no-2-lisbon>; accessed on May 30, 2010

¹⁷⁰ No to Lisbon People before Profit Alliance; 03 October 2009, available at <http://www.people-before-profit.org/taxonomy/term/24>; accessed on June 2, 2010

supporting the treaty ratification. It is also important to note that government was deeply engaged in the promotional campaigns for the Lisbon treaty. Taoiseach appeared before the cross-party European Affairs Committee, where he explained his position and further elaborated on the legal guarantees.¹⁷¹ With participation of parties with different stances the debates actively continued during the Campaign.

Furthermore, there was more civil society engagement in these activities rather than previous year camps. Industrialists, most trade unions, farmers and civil society groups were supporting the Yes vote. IBEC Director of the EU and International Affairs Brendan Butler stated that "the Treaty's successful ratification is more important now than ever. The outcome of the next referendum will define Ireland's future relationship with Europe, and therefore with the world at large."¹⁷² SFA and ISME also encouraged their members to vote in favour of the referendum.¹⁷³ Ireland for Europe group, that played an important role in winning Ireland's second referendum on Nice, has reformed under the leadership of Pat Cox, a former president of the European Parliament.¹⁷⁴ The group provided the arguments why people should vote in favour and encouraged Yes voters to ensure that Ireland remains a central member of the EU.¹⁷⁵ The Brussels also mobilized the needed resources to overcome the challenge that appeared in Irish first referendum and support the second referendum in the

¹⁷¹ Joint Committee on European Affairs, Parliamentary Debates, available at <http://debates.oireachtas.ie/ddebate.aspx?F=EUJ20090908.xml&Node=H2#H3> ; accessed on June 25, 2010

¹⁷² IBEC welcomes Lisbon Treaty guarantees, official website of IBEC, June, 2009, available at <http://www.ibec.ie/IBEC/Press/PressPublicationsdoclib3.nsf/vPages/Newsroom~ibec-welcomes-lisbon-treaty-guarantees-19-06-2009?OpenDocument> ; accessed on June 10, 2010

¹⁷³ Vaughne Miller, *The Treaty of Lisbon after the Second Irish Referendum*, (Houses of Commons Library; Research Paper, 09/75, 2009), 30, Available at <http://www.parliament.uk/documents/commons/lib/research/rp2009/rp09-075.pdf> ; accessed on July 1, 2010

¹⁷⁴ Hugo Brady, *Last Chance for Lisbon: Ireland's EU Referendum*, (UK: Center for European Reform, 2009), 2, available at http://www.cer.org.uk/pdf/bn_lisbon_22sept09.pdf accessed on May 4, 2010

¹⁷⁵ Official website of Ireland for Europe; available at <http://www.irelandforeurope.ie/get-the-facts/> ; accessed on June 26, 2010

country. A group 'Europe for Ireland' was formed in Brussels in order to attract the support and funding for the Yes . campaigns.¹⁷⁶

The changing economic situation cannot be underestimated. The Financial crisis had a negative impact on the Ireland's economy resulting in a drop in the GDP. In his interview Pat Cox, former EP President and the leader of Ireland for Europe Alliance, mentioned that 'a small economy, in these big economic storms, benefits from being in a safe harbour.'¹⁷⁷ This argument was also strongly used by the government while appealing the electorate to vote Yes. Taoiseach Brian Cowen stated that it was 'an absolute must' for Ireland in order to enjoy economic recovery. ¹⁷⁸

Opinion Polls have been intensively conducted reflecting the greater upturn in support of the Lisbon Treaty. According to the Sunday Independent / Quantum Research poll in April Support for the Lisbon Treaty remains steady, with 54 per cent of those polled expressing their intention to vote 'yes'. 24% said they will vote 'no' and 22% had no opinion. However, there is a fall in popularity for Ireland's governing party due to the economic crisis.¹⁷⁹

In July IBEC survey of CEO's opinions on Ireland's international reputation as a result of first Lisbon rejection showed that 84% believed last year's No to Lisbon Treaty damaged Ireland's image internationally.¹⁸⁰ Research poll by Sunday Independent/Quantum in September, just few days before the referendum, showed a significant lead for the Yes

¹⁷⁶ Vaughne Miller, 'The Treaty of Lisbon after the Second Irish Referendum', (Houses of Commons Library; Research Paper, 09/75, 2009), 32, Available at <http://www.parliament.uk/documents/commons/lib/research/rp2009/rp09-075.pdf> ; accessed on July 1, 2010

¹⁷⁷ Pat Cox: EU elections to decide future coalitions, EurActiv news, 04 May 2009, available at <http://www.euractiv.com/en/eu-elections/pat-cox-eu-elections-decide-future-coalitions/article-181929> ; accessed on May 30, 2010

¹⁷⁸ Yes vote is critical, says Cowen, Irish Times, news, 05 May 2009, available at <http://www.irishtimes.com/newspaper/world/2009/0508/1224246132140.html> ; accessed on July 1, 2010

¹⁷⁹ Irish support for Lisbon Treaty on the rise, the Irish Times, 20 April 2009, available at <http://www.euractiv.com/en/future-eu/irish-support-lisbon-treaty-rise/article-181412> ; accessed at June 10, 2010

¹⁸⁰ Survey: Lisbon rejection damaged Ireland's reputation, official Website of IBEC, available at <http://www.ibec.ie/IBEC/Press/PressPublicationsdoclib3.nsf/vPages/Newsroom~survey-lisbon-rejection-damaged-ireland%27s-reputation-27-07-2009?OpenDocument?OpenDocument> ; accessed on May 30, 2010

campaign in the Lisbon Treaty referendum, with 68 per cent now saying they will vote in favour of the treaty, while just 17 per cent say they will vote No, and those who are undecided, or will not vote, amount to just 15 per cent.¹⁸¹

The outcome of the referendum was closed to the anticipated result from the opinion polls: Ireland voted in favour of the Treaty by a final margin of 67.1% to 32.9%. It was the highest Yes vote in a referendum on Europe since the Treaty of Maastricht in 1992. The turnout was also the highest in a European referendum since the original vote on joining the then EEC in 1972.¹⁸² This event put an end to the 1 year political challenge that was caused by the Lisbon Treaty ratification in Ireland and the decision was welcome by the political elites across the Europe.

What motivated the Irish electorate to vote Yes in the second referendum? As Foreign Minister of Ireland, Michael Martin noted: "The legally-binding guarantees secured by the Government in June on taxation, ethical questions and our traditional policy of military neutrality, taken together with the new commitment on the Commissioner and the Solemn Declaration on Workers' Rights, were I believe crucial to today's outcome." However, Finance Minister, Brian Lenihan, said that the result was "an essential first step towards economic recovery."¹⁸³ Analytical Report of Flash Eurobarometer October 2009 provides a comprehensive picture analyzing different aspects of the referendum. According to the research findings the most common answer to the question why they voted 'yes' was that it was "in the best interest of Ireland" (32%). Others argument was that it would help the Irish economy (23%), as for the 18% said that Ireland gets a lot of benefit from the EU. The reasons for voting 'yes' in the 2009 referendum differed from reasons in the 2008 referendum, although in both surveys 'yes' voters emphasized Ireland's interests and the Treaty's ability to

¹⁸¹ Support for Lisbon rises as Cowen and Fianna Fail enjoy poll bounce, Independent, news, 27 September, 2009, Available at <http://www.independent.ie/national-news/support-for-lisbon-rises-as-cowen-and-fianna-fail-enjoy-poll-bounce-1897908.html>; accessed on July, 2010

¹⁸² Ireland votes Yes to Lisbon Treaty, the RTE news, 3 October 2009 , available at <http://www.rte.ie/news/2009/1003/eul Lisbon1.html> ; accessed on June 20, 2010

¹⁸³ Lisbon Treaty passed with decisive 67% in favour, Irish times, October 3, 2009, available at <http://www.irishtimes.com/newspaper/breaking/2009/1003/breaking1.html?via=rel> accessed on June 11, 2010

maintain access to EU membership benefits.¹⁸⁴ The major determinant of No voters this time was the desire to %protect Irish identity and sovereignty+(17%). The second reason was %lack of trust in politicians+(10%).¹⁸⁵ In comparison to the first referendum on Lisbon Treaty, it is essential to mention that two-thirds (67%) of respondents reported finding the %yesqcampaign more convincing, and less than a fifth (18%) said the %noqcampaign was more convincing.¹⁸⁶

The government managed to convince the electorate after long political debates, cautious considerations and planning and even managed to secure special guarantees for the country in special areas concerned by the Irish people. %It demonstrated that the European Union was ready to listen, and to react,+said European Commission President José Manuel Barroso after second referendum. He also stated: October 2 is %a great day, for Ireland and for Europe. I want to congratulate the Irish people on reaching their overwhelming decision after such long and careful deliberation.+¹⁸⁷

¹⁸⁴ Lisbon Treaty Post- Referendum Survey Ireland, Analytical Report, Eurobarometer, European Commission, (October 2009), 9, Available at http://ec.europa.eu/public_opinion/flash/fl_284_en.pdf ; accessed on May 15, 2010

¹⁸⁵ Ibid, 11

¹⁸⁶ Ibid, 24

¹⁸⁷ José Manuel Durão Barroso President of the European Commission Joint Press Point with Vice President Wallström Brussels, Press Release, 3 October 2009, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/432> ; accessed on June 30, 2010

6. *Liberal Intergovernmentalism*

There are widely acknowledged diverse theoretical approaches attempting to explain the European Integration. Liberal Intergovernmentalism designed by Andrew Moravcsik provides its unique prism of understanding the states interaction at EU level. The theory is built on the domain of ~~Intergovernmentalism~~ school but with much more ~~sophisticated~~ and rigorous theoretical underpinning.¹⁸⁸ Discussing ~~institutionalized~~ international policy coordination,¹⁸⁹ Moravcsik brings together Liberal Theory of national preference formation on the assumption of state rationality, a bargaining theory of international negotiations, and a functional theory of institutional choice.¹⁹⁰

Liberal Intergovernmentalism implies the ~~rationalistic~~ framework in the international cooperation. Rationalism is understood as ~~an~~ individualist or agency theory, which required an explanation of, first, actor preferences and, second, collective outcomes as a result of aggregated individual actions based on these preferences. Therefore, ~~rational~~ choice of countries is a central to understanding the theory. Based on the notion that ~~states~~ act rationally or instrumentally in pursuit of relatively stable and well-ordered interests at any given point in time,¹⁹¹ EC negotiations are divided into three stages: national preference formation, interstate bargaining, and the choice of international institutions.

National preference formation takes place from the perspective of domestic politics and confirms the Intergovernmentalism view which states that ~~national~~ interests arise in the context of the sovereign states' perception of its relative position in the states system.¹⁹²

¹⁸⁸ Frank Schimmelfenning, *Liberal Intergovernmentalism in European Integration Theory* ed. Antje Wiener and Thomas Diez, (Oxford University Press, 2004), 75

¹⁸⁹ Andrew Moravcsik, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, in *Debates on European Integration* ed. Mette Eilstrup-Sangiovanni, (Palgrave Macmillan, 2006), 265

¹⁹⁰ Frank Schimmelfenning, *Liberal Intergovernmentalism in European Integration Theory* ed. Antje Wiener and Thomas Diez, (Oxford University Press, 2004), 77

¹⁹¹ Andrew Moravcsik, *The Choice for Europe*, (UK: Routledge, 1999), 18

¹⁹² Ben Rosamond, *Theories of European Integration*, European Union Series, (Palgrave, 2000), 137

In this regard, a government acts at international level according to the national interests of the country, %goals that are defined domestically.+¹⁹³ However, rational state behavior does not appear from the fixed preferences but as a result of the dynamic political processes at domestic level. Usually, preferences are identified by the pressure of the domestic groups/objectives aggregated through political institutions. Therefore, the national interest %emerge through domestic political conflict as societal groups compete for political influence, national and transnational coalitions form, and new policy alternatives are recognized by governments+¹⁹⁴ In this way they also contribute to the formation of foreign policy of the state.

Moravcsik argues that national preferences may fall under two broad issues: Geopolitical interests that reflect %perceived threats to national sovereignty or territorial integrity, whether military or ideological+¹⁹⁵ and economic interests, when countries cooperate to reduce %negative international policy externalities+¹⁹⁶ As analysis of the Amsterdam Intergovernmental Conference reveals the national preference formation might be shaped through issue-specific interdependence as well.¹⁹⁷

%Groups articulate preferences, %governments aggregate them+¹⁹⁸ This interaction is embedded in principal agent relations while governments bring these interests at international negotiation with the ultimate goal to maximize the distributional benefits of the negotiation for the country. On the other hand, governments%primary interest is to keep them in the office

¹⁹³ Andrew Moravcsik, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, in *Debates on European Integration* ed. Mette Eilstrup- Sangiovanni, (Palgrave Macmillan, 2006), 270

¹⁹⁴ Ibid

¹⁹⁵ Andrew Moravcsik, *The Choice for Europe*, (UK: Routledge, 1999), 26

¹⁹⁶ Andrew Moravcsik, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, in *Debates on European Integration* ed. Mette Eilstrup- Sangiovanni, (Palgrave Macmillan, 2006), 273

¹⁹⁷ Andrew Moravcsik, Kalypso Nicolaidis, %Explaining the Treaty of Amsterdam: Interests, Influence, Institutions+, *Journal of Common Market Studies*, Vol. 37, No. 1, (1999), 62, 59-85

¹⁹⁸ Andrew Moravcsik, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, in *Debates on European Integration* ed. Mette Eilstrup- Sangiovanni, (Palgrave Macmillan, 2006), 270

that is guaranteed by the support of a coalition of domestic voters, parties, interest groups and bureaucracies.¹⁹⁹

Once national interests are brought at EU negotiation table interstate, bargaining is defined by Moravcsik as the process of international collective choice through which potential agreements are identified and one is selected.²⁰⁰ In this regard, two challenges appear: efficiency of negotiations and distributional implications of interstate bargaining. However, the result of the cooperation depends on the relative bargaining power of the actors that is a result of the asymmetrical distribution of information and benefits of a specific agreement.²⁰¹

In interstate negotiation three determinants of bargaining power are pointed out: Unilateral policy alternative, when there is a credible threat of non-agreement and government may reject the cooperation in favour of better options; Alternative coalitions by excluding other parties,²⁰² and Potential for compromise and linkages with marginal gains in some issue-areas that is more important to some than to others.²⁰³ Consequently, the binding constraint on major bargains lay in the willingness of the most recalcitrant governments to compromise. To maintain the unity of negotiations, bargains came down in the end to decisions by chief executives from those countries.²⁰⁴

Supply demand interaction of domestic preferences and interstate bargaining is concisely illustrated in Putnam's well known Two- Level Game metaphor. The idea implies simultaneous negotiations at domestic and international level by the statesman. Level 1

¹⁹⁹ Andrew Moravcsik, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, in *Debates on European Integration* ed. Mette Eilstrup- Sangiovanni, (Palgrave Macmillan, 2006), 272

²⁰⁰ Andrew Moravcsik, *The Choice for Europe*. (UK: Routledge, 1999), 51

²⁰¹ *European Integration Theory*, Antje Wiener and Thomas Diez, Oxford University Press, 2004, page: 77

²⁰² Andrew Moravcsik, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, in *Debates on European Integration* ed. Mette Eilstrup- Sangiovanni, (Palgrave Macmillan, 2006), 284-288

²⁰³ Andrew Moravcsik, *The Choice for Europe*. (UK: Routledge, 1999), 65

²⁰⁴ Andrew Moravcsik, Kalypso Nicolaidis, Explaining the Treaty of Amsterdam: Interests, Influence, Institutions, *Journal of Common Market Studies*, Vol. 37, No. 1, (1999), 74, 59-85

represents the bargaining stage between the negotiators, leading to a tentative agreement, and level 2 includes separate discussions within each group of constituents about whether to ratify the agreement.²⁰⁵ Consequently, at national level governments are pressured by domestic groups' interests, and politicians seek power by constructing coalitions among these groups; at international level national governments attempt to make commitments that would not have unfavorable affect on domestic politics.²⁰⁶ Win-set between these levels is possible, when concerns and interests of both sides overlap, the larger each win-set, the more opportunity to overlap. Putnam mentions the main determinants of the win-set: preferences and coalitions among constituents at second level; political institutions domestically and negotiators' strategy.²⁰⁷

The key player linking national and international level with double-edged diplomacy is a statesman. The role of the chief negotiator is crucial as it also have a veto on possible arrangements. The executive tries to reflect calculations of constraints and opportunities on both domestic and international board.²⁰⁸

Interaction between national and international level is strengthened by the Choice of Institutions, the third stage of theory of Liberal Intergovernmentalism. Moravcsik does not agree with the common assumption that supranational institutions do not fit in the Intergovernmentalist approach as institutional structure of the EC is acceptable for the countries as long as it strengthens their control over domestic affairs. Moravcsik discusses

²⁰⁵ Robert Putnam, Diplomacy and Domestic Politics, The Logic of Two-Level Games, in *International Bargaining and Domestic Politics* ed. Peter B. Evans, Harold K. Jacobson, Robert D. Putnam. (University California Press, 1993), 436

²⁰⁶ Ibid page: 434

²⁰⁷ Ibid Page: 442

²⁰⁸ Andrew Moravcsik, Integrating International and Domestic Theories of International Bargaining, in *International Bargaining and Domestic Politics* ed. Peter B. Evans, Harold K. Jacobson, Robert D. Putnam. (University California Press, 1993), 17

institutions from functional regime theory which implies that institutions are passive, transaction reducing mechanisms.²⁰⁹

EU has emerged as a unique organization where pooling sovereignty through QMV and delegation of powers to the institutions happens. To the question what determines governments desire to reform the institutions, Moravcsik provides different theoretical insights of this choice: ideological decision is made up by the governments who support for federalist view of the EU, therefore, they wish to delegate more power; Delegation might be also required due to the technocratic reasons to settle technically complex issues through high performing expertise and coordination. Finally, sovereignty delegation might be justified in the situations when future is uncertain. Credible Commitments lock in member states compliance with particular arrangements or relative influence over future decisions.²¹⁰

In conclusion the theory argues that national interests matter and play an important role in the process of European Integration. At International level governments adopt positions based on the rational calculations of the costs and benefits for social groups and public opinion and bargain for the best outcome of the substantive cooperation.

²⁰⁹ Andrew Moravcsik, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, in *Debates on European Integration* ed. Mette Eilstrup-Sangiovanni, (Palgrave Macmillan, 2006), 291-292

²¹⁰ Andrew Moravcsik, Kalypso Nicolaidis, Explaining the Treaty of Amsterdam: Interests, Influence, Institutions, *Journal of Common Market Studies*, Vol. 37, No. 1, (1999), 76, 59-85

7. Explaining Referendum as a Negotiation Tool through Liberal Intergovernmentalism

The simple fact is that the pursuit of national interests remains at the heart of the EU. The challenge is to be aware of national interests, to accommodate them, and to encourage their gradual sea-change+ (McDonagh, 1998, page: 14-16)²¹¹

Irish Referendums on the Lisbon Treaty emerges as one of the clear patterns revealing how much domestic politics may impact on the development of the European Integration process. The rejection of the reform treaty by the first referendum posed a big political challenge to the European cooperation of 27 countries and actually hindered the reform course of the European Union. The subsequent strategies imposed both by the government and the union draws interesting implications of the political context.

After rejecting the treaty by the first referendum, Ireland could receive guarantees that would preserve the sovereignty over national interests of the country. Therefore, we would like to address the issue of the referendum role at international cooperation. How the Irish referendum outcome influenced the interstate negotiation afterwards? In other words, can domestic constraints of ratification, as a result of the referendum shaping the governmental preferences in the EU member state, expand the negotiating power of the country at interstate bargaining?

While treaty-making process in the European Union may be regarded as a ~~pr~~ process rather than event²¹² (process versus static approach), the ~~black box~~ of national interest of the member states plays a crucial role. It ~~cut~~ across the different levels of national interest representation, involving both politicians (at the ministerial and at the prime ministerial level) and officials²¹³. Furthermore, the process may be highly influenced by the public opinion as Irish case shows.

²¹¹ Cited in Andrew Moravcsik, Kalypso Nicolaidis, *Explaining the Treaty of Amsterdam: Interests, Influence, Institutions+*, Journal of Common Market Studies, Vol. 37, No. 1, (1999), 65, 59-85

²¹² 13. Thomas Christiansen; Gerda Falkner; Knud Erik Jørgensen, *Theorizing EU treaty reform: beyond diplomacy and bargaining+*, Journal of European Public Policy 9:1, (2002), 12, 12. 32

²¹³ 14. Derek Beach and Thomas Christiansen, *Introduction: Political agency in the constitutional politics of the European Union+*, Journal of European Public Policy 14:8 (2007), 1165, 1163. 1166

Firstly, to hold the referendum on EU treaty reform increases the risk that the reform will be rejected.²¹⁴ But once a measure has been passed through a referendum it is often politically unacceptable (or legally prohibited) to change it without another referendum. If legislation is passed by the public, it can be changed by the public.²¹⁵ We have discussed in details the dynamics of the Lisbon Treaty referendums in Ireland providing the factual information from the first pre-referendum campaigns to the main findings of the second referendum. We assume that first referendum result that had shaped the domestic preferences in regard to the Lisbon Treaty enhanced the negotiation power of the country at interstate bargaining at European Council Meetings afterwards and managed to secure the national interests of Ireland.

In order to comprehensively respond to the research question of the paper, we provide the analysis of this particular case-study through the framework of the Liberal Intergovernmentalism theory including the Level-Game metaphor that can provide a valuable explanation of the interaction between domestic and international level with the possible best outcomes for the national interests of the participating countries. We address the first and second stage of negotiations implied in the Liberal Intergovernmentalism approach: National preference formation and interstate bargaining. However, the choice of Institutions is not relevant for our case.

National preference formation in Ireland took place during the first referendum in 2008. While national preferences are identified as the pressure from domestic groups according to the liberal Intergovernmentalism, in this case political parties, civil society, private individuals, and different interest groups have played a key role in pre-referendum campaigns that had an impact on the public opinion formation. The key points that have emerged as crucial in Ireland if Lisbon Treaty was adopted revealed in the post-referendum research findings and each of these issues have been strongly propagated by the referendum camps. These issues became the domestic preferences with the relationship of the European

²¹⁴ Simon Hix, *The Political System of the European Union*, The European Union Series, (N.Y: Palgrave Macmillan, 2005), 201

²¹⁵ Matthew Mendelsohn, Andrew Parkin, *Referendum Democracy, Citizens, Elites and Deliberation in Referendum Campaigns*, (Palgrave 2001), 11

Union once new treaty would come into force: neutrality, loss of Commissioner, socio-ethical issues, taxation policy and workers rights.

With the desire to protect Irish Identity Irish public claimed that neutrality of the country in regard to the new treaty should have been preserved. The argument was supported by the Sinn Fien and PANA during the campaign; Socio-ethical issues should not have impacted by the new Charter of Fundamental Rights especially on the abortion, prostitution, euthanasia and gay marriage that was emphasized by the catholic Coir group; Taxation policy that have largely contributed to the economic progress of the country should be unchanged as claimed by the one of the strongest camps, Libertas; Workers rights to be protected according to the domestic regulations was promoted by People's Movement and the People before Profit Alliance; Commissioner to be kept was lobbied by the Sinn Fien leader Gerry Adams. (see chapter 5.4) Exactly these issues were brought at the EU negotiation table in the upcoming European Council meetings.

We operationalise the national preferences as issues shaped through contention among domestic political groups, that states seek to realize through world politics.²¹⁶ Preferences of national governments in European Integration are mainly issue-specific. Insofar as European integration has been predominantly economic so far, so have state preferences.²¹⁷ In the race of rapidly developing globalization, we may argue, that these issues have become wider. In Irish case, they mostly referred to the sensitive areas of the Irish traditions and identity for the country.

Once liberal Intergovernmentalism claims that societal groups articulate preferences at domestic level due to their identity, interests and influence, the strategic use of referendums may be relevant. In theory, referendums are designed to permit citizens to make decisions about public policy, but in practice referendums are used strategically by governments or groups seeking not to turn decision making over to citizens, but to persuade voters to ratify the position favored by the referendum's sponsor. The power of elites to set the agenda and

²¹⁶ Andrew Moravcsik, *The Choice for Europe*, (UK: Routledge, 1999), 22

²¹⁷ Frank Schimmelfenning, *Liberal Intergovernmentalism in European Integration Theory* ed. Antje Wiener and Thomas Diez, (Oxford University Press, 2004), 78

to define the choices facing citizens must therefore be given prominence in any discussion of the referendum.²¹⁸

This argument might be appropriate if we take into account the strengths of the both campaigns on the Yes and No side. Later, a large majority of Irish voters (68%) said the No campaign was the most convincing; even a majority of Yes voters felt that way (57%).²¹⁹ On the other hand, funding had an important impact on the camps positions. For example, Ganley spent in his anti-lisbon campaign more than the three largest Irish political parties together.²²⁰

Most importantly, while government claimed that the Lisbon Treaty ratification was in their highest political interest, the Yes campaign was many times described as totally defensive, late and weak.²²¹ Indeed, in some ways there was a sort of withdrawal of the political elites who wanted a Yes vote. They didn't campaign, and when they did campaign, they were on the backfoot as they were always responding to points the No campaigners raised . and people just didn't believe them, mentioned Jane O'Mahony, lecturer at the University of Kent and co-author of *Ireland and the European Union* in her Interview.²²² The government lost the referendum because it left its campaign . for what it was worth . too late, leaving the field open to disparate No campaigns with their various agendas,²²³ writes Irish Independent, August, 2008.

²¹⁸ Matthew Mendelsohn, Andrew Parkin, *Referendum Democracy, Citizens, Elites and Deliberation in Referendum Campaigns*, (Palgrave 2001), 2

²¹⁹ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; June 2008; Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 30

²²⁰ Cathal M. Brugha, *Why Ireland Rejected the Lisbon Treaty*, *Journal of Public Affairs*, 8, (2008), 306, 303-308

²²¹ *Ibid*, 308

²²² Interview with Jane O'Mahony available at <http://www.theeuros.eu/Jane-O-Mahony-The-Irish-realise,2516> accessed on June 30

²²³ Piotr Maciej Kaczyński, Sebastian Kurpas, Peadar ó Broin, *Ratification of the Lisbon Treaty Ireland is not the only problem*, *The European Policy Institutes Network*, (2008), 3, available at <http://www.ceps.eu/node/1540> accessed on June 15

Another important aspect of the referendum was the perception of the expected consequences by the public that could be embedded in the strategic voting and the role of the referendum. Among focus groups of the Millward poll respondents there was a general feeling that the Irish people were going to be asked to vote again, sooner or later, whether on the same or on a revised document. Although many had voted No simply through lack of understanding, and some were prepared to consider changing their minds if the same document were presented with clearer explanations, the general consensus at the time, was that if presented unchanged it could result in an even more negative result.²²⁴

Furthermore, Sinn Féin's campaigning slogan 'Vote No for a better deal'²²⁵ reflected in the electorate's understanding: 'No+camp, voters thought that the result would put Ireland in a strong position to renegotiate the treaty, to allow Ireland to maintain its neutrality and to keep its tax system (all backed by three-quarters of voters or more);²²⁶ and impressive 76% of No+ voters supported the view that the No+vote would allow the Irish government to renegotiate exceptions+within the treaty.²²⁷

This was what actually happened at the international negotiation table of 27 countries of the European Union. At this stage, where government bargain for the advantage on the basis of their national preferences and power as stated in the Liberal Intergovernmentalist approach, the Irish government was granted with stronger negotiation leverage due to the national constraints of ratification revealing the key points of the treaty as obstacles.

Interstate bargaining took place at European Council meetings that gathered heads of the states and government of all member states of the European Union at the negotiation table in June, October, December 2008 and June 2009. At interstate bargaining the head of

²²⁴ Post Lisbon Treaty Referendum Research Findings; Millward Brown IMS, (2008), 26, available at <http://dfa.ie/uploads/documents/Publications/Post%20Lisbon%20Treaty%20Referendum%20Research%20Findings/final%20-%20post%20lisbon%20treaty%20referendum%20research%20findings.pdf> Accessed on 20 June

²²⁵ No to Lisbon, Official Website of Sinn Féin available at <http://www.sinnfein.ie/no-2-lisbon> accessed on June 15

²²⁶ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008), 5, Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on June 20

²²⁷ Ibid, 24

the Ireland had a stronger negotiation power addressing the concerns of the Irish people and was in a position to promote and secure the national interests of the country. It was the place where the comprehensive outcome was supposed to be found in response to the EU citizens' interests. The Irish government could argue that it had taken seriously the reservations expressed by the Irish citizens about some aspects of the European Integration process and acted to protect Irish Interests. It would go into a second referendum campaign on the back of securing EU agreement on maintaining permanent representation for all member states on the Commission;²²⁸ In addition, emphasizing the tightness and inflexibility of domestic constraints negotiation on the securing the special benefits for the country could be held.

Domestic Constraint of ratification was evident, electorate voted against the treaty having distributional effects on international bargain. In fact, this could be named as involuntary defection according to the Putnam theory as domestic groups override or subvert agreement supported by a statesman.²²⁹ On the other hand, national preferences of the country were clear and specific areas were singled out that could lead to the reaching certain compromises at EU level.

Interstate negotiation over treaty-making issues we have operationalised as a bargaining game over the precise terms of mutually beneficial cooperation. In such bargaining games, the configuration of (domestically determined) national preferences defines a bargaining space of potentially ratifiable agreements. All which are equilibrium outcomes, that is, all governments prefer them to unilateral or coalitional alternatives,²³⁰ as stated in the Liberal Intergovernmentalist approach.

Robert Putnam brings interesting notion of a win-set at international negotiations. Each state is assumed to have a win-set, defined as the set of potential agreements that would be ratified by domestic constituencies in a straight up-or-down vote against the status quo of no

²²⁸ John O'Brennan, Ireland and the Lisbon Treaty: Quo Vadis?, Centre for European Policy Studies, No. 17 (2008), 9, available at <http://www.ceps.eu/node/1565> ; accessed on June 1

²²⁹ Andrew Moravcsik, Integrating International and Domestic Theories of International Bargaining, in International Bargaining and Domestic Politics ed. Peter B. Evans, Harold K. Jacobson, Robert D. Putnam. (University California Press, 1993), 28

²³⁰ Andrew Moravcsik, The Choice for Europe, (UK: Routledge, 1999), 51

agreement. With increases in the benefits of an agreement or the costs of no agreement, the win-set expands. The statesman acts as the agent for the policy, but is constrained only by the win-set. That is, by the nature of the agreements that the domestic polity would ratify.²³¹ Win-set could lead to the compromise between the European Union and the Irish Government as both sides clearly had an interest in reaching agreement. In this case the differential in the relative size of the win-sets shifts the distribution of costs and benefits in favour of the player with the more constrained win-set that is confirmed in Irish case as well.

On the other hand, issue linkages played an important role: due to the turmoil in financial markets, Ireland's economic future cannot be contemplated seriously outside of EU structures.²³² Economic crisis, in fact, contributed to the changing context of the negotiation as Ireland's particular interest to cooperate with Europe was evident.

Compromise was reached at the interstate bargaining and as a result of the domestic preferences the Irish government received the legal guarantees by adopting binding declarations on neutrality; the right to life, education and the family; and taxation preserving the sovereignty over national interests. In addition, solemn declaration on workers' rights was adopted and Council agreed to keep the one national of each Member State in the Commission.²³³

With special arrangements the second referendum was held in Ireland in October 2009, this time with the active role of the government during the campaigning in favour of the treaty. After referendum 67% of respondents reported finding the 'yes' campaign more convincing, and less than a fifth (18%) said the 'no' campaign was more convincing. This is almost a complete turnaround from the 2008 situation where 67%, including even 'yes' voters,

²³¹ Andrew Moravcsik, Integrating International and Domestic Theories of International Bargaining, in International Bargaining and Domestic Politics ed. Peter B. Evans, Harold K. Jacobson, Robert D. Putnam. (University California Press, 1993), 23

²³² John O'Brennan, Ireland's plan to resurrect the Lisbon Treaty to be unveiled at the Brussels summit; (2008), 2, available at <http://www.ceps.eu/node/1587> accessed on June 1

²³³ Lisbon Treaty and Ireland, Official website of the European Union, available at http://ec.europa.eu/ireland/lisbon_treaty/lisbon_treaty_progress/index_en.htm accessed on June 10

were more convinced by the no campaign and only 15% said they were persuaded by the yes campaign.²³⁴

In conclusion, the special guarantees facilitated the winning of the second referendum in favour of the Lisbon Treaty as the possibility of the renegotiation on certain provisions was already anticipated from the first referendum.²³⁵ The referendum played a key role to expand the negotiation power of the member state at EU bargaining as Irish case confirms. Therefore, we hypothesize that domestic constraint of ratification as a result of the referendum can impact on international negotiation and it can be used as a negotiation tool at interstate bargaining on behalf of the national interests. Consequently, the hypothesis of the work by Hug and König²³⁶ and later by Hug and Schulz about referendum, that it strengthens the negotiating position of member states holding referendum before the IGC²³⁷, is also applicable and relevant at the stage of treaty-ratification.

²³⁴ Lisbon Treaty Post- Referendum Survey Ireland, Analytical Report, Eurobarometer, European Commission, (October 2009), 24, Available at http://ec.europa.eu/public_opinion/flash/fl_284_en.pdf accessed on May 15

²³⁵ Post-referendum survey in Ireland; Analytical Report; Eurobarometer, European Commission; (June 2008),5, Available at http://ec.europa.eu/public_opinion/flash/fl_245_full_en.pdf accessed on May 10

²³⁶ . Simon Hug, Tomas König, %a View of Ratification: Governmental Preferences and Domestic Constraints at the Amsterdam Intergovernmental Conference+, International Organization 56, 2, (2002), 471, 447. 476

²³⁷ Simon Hug, Tobias Schulz, %Referendums in EU Constitutional Building Process+, Rev Int Gov, 2, (2007), 182, 177-218

8. Conclusion

The idea of this paper has been to explain how the Lisbon Treaty was adopted focusing on the ratification of the treaty in Ireland by the public voting that eventually lead us to the interesting interaction of the national politics with international level. The meticulous examination of the domestic political peculiarities resulting in the ratification constraints, helps us to better understand this μ level relationship and more precisely, bargaining power of the country at EU level managing to influence the outcome than expected.

In theoretical terms we have applied to the first 2 stages of the negotiation according to the Liberal Intergovernmentalism that provided a profound framework for better discussion of the political process. Case-study of Irish referendums on Lisbon Treaty appeared as one of the clear examples of domestic politics having impact on the development of the European Integration process. We have discussed the first referendum in the prism of the National Preference formation based on the notion of state-society relations, where elites, political parties and different interest groups contributed to the shaping the preferences through pre-referendum campaigns. As a result, key issues of the national interests of Ireland appeared that was backed up by the traditions and identity of the Irish people.

Once treaty was rejected the domestic constraint of ratification was clear. On the one hand, statesman held the responsibility to promote Irish interests at EU interstate bargaining under the pressure of domestic groups and public opinion. On the other hand, the EU was striving to enforce the treaty putting the end of the constitutional challenge of the union. At European Council Meeting, in December 2008, Legal guarantees were adopted for Ireland in order to preserve the national sovereignty of the country in particular areas. The special guarantees met the expectations of the Irish people who followed the logic of %ote no for a Better Yes²³⁸.

We conclude that domestic constraints of ratification as a result of the first referendum shaping the national preferences in regard to the Lisbon Treaty enhanced the negotiation

²³⁸ Main Players; No side, Lisbon Treaty; The Irish Times available at <http://www.irishtimes.com/focus/thelisbontreaty/mainplayers/no.html>; accessed on May 25, 2010

power of the country at interstate bargaining. If a new offer for Ireland would not be negotiated, the failure would be inevitable. This context actually facilitated the process of Interstate bargaining where Ireland obtained concessions on behalf of the national interests of the country. Therefore, we argue that due to the domestic constraints of ratification as a result of referendum shaping the national preferences of the country contributed to the expanding negotiation power of the country at the EU interstate bargaining. Ireland managed to bargain for the compromise with 26 other member states of the European Union.

In the end we generalize the hypothesis assuming that a referendum can be used as a negotiation tool at interstate bargaining and the statement by Hug and Schulz that governments having referendum before the IGC realize more negotiation gains,²³⁹ is applicable in the case of Treaty Ratification as well.

²³⁹ Simon Hug, Tobias Schulz, %Referendums in EU Constitutional Building Process+, Rev Int Gov, 2, (2007), 182, 177-218

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